

**ORAL ARGUMENT REQUESTED BUT NOT YET SCHEDULED**

**CASE NO. 15-1184  
(CONSOLIDATED WITH CASE NO. 15-1242)**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

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**OZBURN-HESSEY LOGISTICS, LLC,  
PETITIONER/APPELLANT,**

**v.**

**NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT/APPELLEE,**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION  
INTERVENOR.**

---

**Petition for Review and Cross-Petition for Enforcement of a Decision and  
Order of the National Labor Relations Board**

---

**DEFERRED APPENDIX - VOLUME I**

---

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**ATTORNEYS FOR PETITIONER**

January 7, 2016

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1		<u>E X H I B I T S</u>	
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1 JUDGE RINGLER: All right, so let's go off the record  
2 for just a moment while we retrieve Ms. Miles.

3 (Off the record from 10:59 a.m. to 11:00 a.m.)

4 JUDGE RINGLER: Ms. Miles, if you would, state your name  
5 for the record, first and last, and spell first and last for  
6 us as well.

7 MS. MILES: Shannon Miles, S-h-a-n-n-o-n M-i-l-e-s.

8 JUDGE RINGLER: And please raise your right hand.

9 (Whereupon,

10

**SHANNON MILES**

11 was called as a witness by and on behalf of the General  
12 Counsel and, having first been duly sworn, was examined and  
13 testified on her oath as follows:)

14 JUDGE RINGLER: All right, counsel, your witness.

15

**DIRECT EXAMINATION**

16 Q. BY MR. HEARNE: Ms. Miles, if you would, what is your  
17 position with OHL?

18 A. Senior Employer Relations Manager.

19 Q. In that position, you work for the -- you work in the  
20 Human Resources Department of OHL?

21 A. Yes.

22 Q. Your work location is located where?

23 A. Brentwood.

24 Q. Is that the Headquarters of the Employer?

25 A. Yes, sir.

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1 Q. This conversation with Mr. Heath when you spoke with  
2 him, did you tell him that you were going to get rid of him?

3 A. No, sir.

4 Q. Did you tell him that you have a lot of girls that will  
5 do what you say and you can get four or five of them to say  
6 that Mr. Heath was pursuing them sexually?

7 A. No, sir, I did not.

8 Q. Did you say, "It doesn't have to be true when you have  
9 four or five statements saying it is"?

10 A. No, sir.

11 Q. After lunch, did you go back to the department?

12 A. Yes, I did.

13 Q. After you returned to your department, what did you do?

14 A. Began working, or at least tried.

15 Q. Did you decide to -- what did you decide to do about  
16 what happened in the break room?

17 A. Well, I go back to my work area and started trying to  
18 work and another coworker said that, "Carolyn, you shaking."  
19 And she asked me why I was shaking and why was I so nervous.  
20 And I told her what had happened in the break room. Then she  
21 goes to the bathroom. So I decided to write a description on  
22 what had took place in the break room and then I numbered the  
23 paper from one to ten so that I could get some signatures and  
24 some vouch on what had happened in the break room.

25 Q. Did you go to any employees about this?

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1 A. Yes, I did.

2 Q. More than one?

3 A. Yes, sir.

4 Q. Who did you go to first?

5 A. I went to Troy Hughlett.

6 Q. Does he work in the Fiskars Department?

7 A. He does.

8 Q. When you approached him, what did you tell him?

9 A. I said, "Troy, you heard what happened in the break  
10 room, did you?"

11 He said, "Yeah, I did." He said, "And that was sad  
12 because I don't think I would have took it."

13 I said, "Well, I've prepared a statement on what had  
14 just took place in the break room, the threat with Phil.  
15 Would you be willing to read the statement and sign it?"

16 Q. Did you hand him that document?

17 A. Yes, I did.

18 Q. Did he sign it?

19 A. He did.

20 Q. Who was the next person you went to about this?

21 A. I believe it was Annie Ingram.

22 Q. When you approached her, what did you tell her you were  
23 doing?

24 A. Well, she was in the same area with Troy, so I asked  
25 her. I said, "Annie, you heard everything too, did you?"

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1 She said, "Yeah, I heard him and he called us, stupid  
2 too."

3 I said, "Well, I did a statement, and would you be a  
4 witness to what had happened in the break room?"

5 She said, "Yeah, I'll sign it."

6 Q. Did you hand her that document?

7 A. I did.

8 Q. Did she sign it?

9 A. She did.

10 Q. Who did you go to next?

11 A. I went to Troy -- Kedric Smith.

12 Q. Kedric Smith. When you approached Mr. Smith, what did  
13 you tell him?

14 A. I said, "Kedric, you pretty much heard the threat that  
15 Phil made to me in the break room and you heard everything he  
16 said."

17 He said, "Yeah, I heard him."

18 I said, "Well, I prepared a statement." I said, "Would  
19 you go over it and sign it if you agree with what he said in  
20 the break room?"

21 So Kedric then, he read it out. And he said, "Yeah,  
22 that's pretty much what happened." And then he signed it.

23 Q. What employee did you go to next?

24 A. I went to Mary -- I believe it was Mary Coleman next.

25 Q. What did you tell her?

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1 A. I told her that I had prepared a statement and asked her  
2 if she would be a witness to what had happened in the break  
3 room. And she told me that she didn't want to be a part in  
4 this.

5 Q. Did you ask her to sign?

6 A. Yes.

7 Q. Did she sign?

8 A. No, she didn't.

9 Q. Who did you go to next?

10 A. By that time I think I go back to my work area. I was  
11 looking for James Bailey. But before I could go looking for  
12 him, he pulls up with his work order.

13 Q. When he pulled up, did you talk with him?

14 A. I did. I asked him, I said, "Mr. Bailey, would you sign  
15 this letter, this description to what had happened in the  
16 break room?" I said, "You heard what had transpired in the  
17 break room."

18 He said, "Yeah, I'll sign it."

19 Q. Did he sign it?

20 A. He did sign it.

21 Q. Did you go to anybody else that you can recall to sign  
22 this statement?

23 A. I recall going to Mr. Waller, Quenton Waller.

24 Q. And what happened when you went to him?

25 A. I went to Quenton and I asked him did he hear what went

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1 on in the break room? Did he hear Phil threatening me?

2 He said, "I don't know what I heard." He said, "I heard  
3 something." He said, "But I didn't, you know, I was on my  
4 phone so I didn't hear anything."

5 I said, "So you don't want sign? You telling me you  
6 don't want to -- you're not a witness. You didn't hear  
7 anything?"

8 He said, "Well, I heard something, but I was on my  
9 phone."

10 So I said, "Are you willing to sign?"

11 And he said he didn't want to be a part of that mess.  
12 You know pretty much how the Company is.

13 Q. So he did not sign?

14 A. So he didn't sign.

15 Q. Did you talk to anybody else?

16 A. No, sir.

17 Q. After you got these signatures, what did you do with  
18 this document?

19 A. I took it upstairs to HR.

20 Q. When you got to the HR area, did you meet with anybody?

21 A. I did.

22 Q. Who did you meet with?

23 A. Van Young.

24 Q. When you -- where was she when first saw her?

25 A. She was standing there speaking with her assistant Dani

1 Bower.

2 Q. When you approached her, what did you tell her?

3 A. Well, I told her that I was threatened by Phil Smith and  
4 that I had prepared a statement. Witnesses had signed it.

5 Q. When you told her that what did she say?

6 A. Well, she said, "Were there witnesses and did they sign  
7 it?"

8 I said, "They did sign it." I think the signatures were  
9 on the second page.

10 Q. Okay. Did you give her a copy of this statement?

11 A. I actually gave her the original because I hadn't made a  
12 copy before I got upstairs.

13 Q. So you gave her the original. What did she do with it?

14 A. She took it and made me a copy. I told her she could  
15 keep the original.

16 Q. Now, the paper you used, what type of note -- was this  
17 like a notebook you wrote in or what did you write this on?

18 A. It was on a composition notebook.

19 Q. When you gave her the form, did you give her the entire  
20 book or tear out the pages?

21 A. Yes, there were two pages. One with all -- the majority  
22 of the description and the second page had a little bit -- a  
23 little less description with my signature and signed  
24 signatures.

25 **(General Counsel's Exhibit 10 marked for identification.)**

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1 homosexual slur, they may not make their policy applicable  
2 and thereby tolerate discrimination against homosexuals --

3 MR. BODZY: That's under the mischaracterization of the  
4 policy.

5 MR. HEARNE: Well, the point being is that --

6 JUDGE RINGLER: Hold on one second. Direct your  
7 comments to me, not to each other. That's first and  
8 foremost.

9 I think I'm ready to rule on that. I think your  
10 question is appropriate because I think that he's trying to  
11 draw an analogy between that type of comment being accepted  
12 versus others. And that's for me to decide whether they're  
13 close enough and I'd like to hear it. So, go ahead.

14 Q. BY MR. HEARNE: This meeting, do you recall when this  
15 took place?

16 A. It was in, I think, around 2008, 2009.

17 Q. Was it before the Union organizing campaign began?

18 A. Yes, it was.

19 Q. The meeting where around -- the meeting when this  
20 comment was made, what type of meeting was it?

21 A. It was a pre-shift meeting that we have every -- we were  
22 having every morning.

23 Q. The employees present would have been the employees in  
24 that department?

25 A. Yes, sir.

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1 A. Yes, it is.

2 Q. So Kedric Smith also inaccurately described whether  
3 there was a statement on the piece of paper, correct?

4 A. Absolutely.

5 **(Respondent's Exhibit 5 marked for identification.)**

6 Q. BY MR. BODZY: Ms. Jones, I've placed in front of you a  
7 document that's been marked for identification purposes as  
8 Respondent's Exhibit 5. It appears to be a statement signed  
9 by Troy Hughlett; is that right?

10 A. Yes.

11 Q. And Mr. Hughlett indicates here, "There's nothing  
12 written on the paper but a list of numbers. There wasn't a  
13 statement." Do you see that?

14 A. I do.

15 Q. Is that inaccurate?

16 A. Yes, it is.

17 Q. So, Ms. Jones, your testimony is that all four people  
18 who signed your May 26th statement gave incorrect statements  
19 to OHL that the paper was blank, right?

20 A. Yes, that's incorrect.

21 Q. Now, if an employee were to collect a list of names and  
22 then write a description above it and turn it into HR, that  
23 wouldn't be appropriate, would it?

24 MR. CONNOR: Objection, calls for speculation.

25 JUDGE RINGLER: Overruled.

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1 THE WITNESS: What was the question again?

2 Q. BY MR. BODZY: If an employee were to collect a list of  
3 names and write a statement above it and turn it into HR,  
4 that would not be appropriate, would it?

5 A. No, it wouldn't.

6 Q. Because it would be misleading to HR, correct?

7 A. Exactly.

8 Q. And because the people who signed the statement wouldn't  
9 know what's written above their name when it gets turned in,  
10 right?

11 A. If it wasn't a description.

12 Q. If there wasn't a description above it?

13 A. Exactly.

14 Q. Now, you testified about a meeting where Mr. Smith, Phil  
15 Smith, allegedly made a homophobic slur, correct?

16 A. If that's what homophobic means.

17 Q. Okay, a slur that you thought was inappropriate remark  
18 towards homosexuals.

19 A. Absolutely.

20 Q. And you didn't go to complain about Mr. Smith's remark  
21 to anyone in OHL management, did you?

22 A. No, sir.

23 Q. You're not aware of any OHL employees who referred to a  
24 coworker with a racial slur multiple times and kept their  
25 job, are you?

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1 A. Yes, that's my signature, but I don't know --

2 Q. You don't recall signing this document?

3 A. I signed this paper, but I don't remember seeing this  
4 writing.

5 JUDGE RINGLER: You signed the paper, ma'am, a blank  
6 piece of paper, you signed it in the middle of the paper?

7 THE WITNESS: I didn't see her writing this. This is my  
8 handwriting.

9 JUDGE RINGLER: So it's your signature?

10 THE WITNESS: Yeah.

11 JUDGE RINGLER: And you recall signing a blank piece of  
12 paper in the middle of the paper? Or did you sign a piece of  
13 paper and you just weren't sure what was written or something  
14 else?

15 THE WITNESS: Well, she asked -- she kind of confused me  
16 and stuff.

17 JUDGE RINGLER: Do you remember signing a paper with  
18 something written on it? Or did you just sign a blank piece  
19 of paper?

20 THE WITNESS: I signed it.

21 JUDGE RINGLER: Okay.

22 THE WITNESS: I don't remember this writing.

23 JUDGE RINGLER: You signed it, but you don't remember if  
24 anything was written on it when you signed it?

25 THE WITNESS: I don't remember this I'm reading here.

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1 Q. She asked you? That's what I'm asking you now what she  
2 asked you in that interview.

3 JUDGE RINGLER: He's not asking you whether it was on  
4 paper. He's just asking you whether or not you discussed it.

5 THE WITNESS: Okay.

6 Q. BY MR. GOODWIN: Exactly. I'm trying to get into what  
7 Van asked you during this I'll call it interview number two.  
8 The one you had with her, okay?

9 And did you tell her that Carolyn had only asked you if  
10 you had heard the conversation?

11 A. Yeah, she asked me if I heard the conversation, and I  
12 said yeah.

13 Q. And did you say that all that Carolyn asked you about  
14 was if you had heard the conversation? Did you tell that to  
15 Van? Is that what you told --

16 A. Carolyn asked me if I heard the conversation.

17 Q. Okay.

18 A. Yeah, I heard the conversation.

19 Q. All right. But did you tell Van that that's the only  
20 question Carolyn asked you?

21 A. Yeah.

22 Q. And that's what you told Van? Is that what you told  
23 Van?

24 A. Yes, sir.

25 Q. And did you tell Van that at the time you signed -- I

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1 guess she was talking about the Carolyn Jones' written  
2 statement -- at the time you signed it, there was no  
3 statement on the paper?

4 A. There was some on it.

5 Q. All right, so you didn't tell Van --

6 A. I didn't tell Van that.

7 Q. Didn't tell Van that.

8 Okay, did you tell Van that you did not see the  
9 statement because the paper was blank?

10 A. No, I didn't tell Van that. It was something on the  
11 paper for me to sign.

12 Q. Okay. And did you tell Van that you only signed after  
13 answering Carolyn that, yes, you had heard the conversation?  
14 Did you say that to Van?

15 A. Say that again.

16 Q. Okay, did you tell Van that you only signed after  
17 answering Carolyn's question that, yes, you had heard the  
18 conversation?

19 A. Yeah.

20 Q. So what you're saying now is the only thing on GC-23  
21 that is not correct is that the paper was blank?

22 A. Yes.

23 Q. Okay.

24 MR. HEARNE: Well actually I think that mischaracterizes  
25 her testimony. She's also saying --

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1 Q. That there wasn't a statement.

2 A. No.

3 Q. You didn't tell her that?

4 A. Uh-uh.

5 Q. What did you tell her? Let's be clear. What did you  
6 tell Shannon then?

7 A. She was asking me -- like she asked me what was all on  
8 the paper and I -- she came to me and asked me what -- I  
9 said, "Carolyn brung a paper to me and told me to sign. It  
10 wasn't a blank paper." And she had -- I just signed my name  
11 and asked me to be a witness to what Phil had said.

12 Q. Isn't the only thing you told Shannon was that you were  
13 signing this because you thought you were just signing to be  
14 a witness --

15 A. To be a witness.

16 Q. -- and there was no statement and it was a blank piece  
17 of paper?

18 A. That's all I saw that was on it. I just signed my name  
19 and that was it.

20 Q. I'm asking you what you told Shannon. Did you tell  
21 Shannon that it was a blank piece of paper when you signed  
22 your name?

23 A. I'm not sure.

24 Q. You're not sure?

25 A. What are you trying to ask me?

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		<u>I N D E X</u>				<u>VOIR</u>
		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1						
2						
3	<u>WITNESSES</u>					
4						
5	Renal Dotson	251	277	289	--	--
6		273				
7						
8	Kimberly Pratcher	293	313	--	--	--
9						
10	James Bailey	321	346	353	--	--
11		342				
12						
13	Undenise Martin	355	360	363	--	--
14				364		
15						
16	Linda Cotton	366	360	--	--	--
17		376				
18						
19	Anita Wells	391	403	405	405	--
20		400				
21						
22	Latoya Cox	407	425	426	427	--
23						
24	Keith A. Hughes	429	461	467	--	--
25		459				
26						
27	Jennifer Smith	473	502	530	--	--
28		499				
29						
30	Sheila Childress	534	547	--	--	--
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1	<u>E X H I B I T S</u>		
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3	GENERAL COUNSEL'S		
4	GC-6 (b)	263	263
5	GC-19	329	334
6	GC-20	333	335
7	GC-21	337	339
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9	GC-25	472	472
10	GC-26 (a)	444	445
11	GC-26 (b)	447	449
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19	RESPONDENT'S		
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1 Q. But you knew enough about it to call it joking and  
2 laughing, right?

3 A. Yeah, I admitted that he laughs and jokes.

4 Q. Okay. Now, in the statement that you gave to  
5 Mr. Hearne, you didn't say anything about Mr. Griffin crying,  
6 did you?

7 A. No, I didn't.

8 MR. BODZY: That's all the questions I have on the C  
9 case. I have a few questions on the R case.

10 JUDGE RINGLER: Okay.

11 Q. BY MR. BODZY: Ms. Martin, you are a customer service  
12 representative; is that right? And you were part of the  
13 group that voted -- that was eligible to vote in the Union  
14 election, right?

15 A. Yes.

16 Q. And as a customer service representative, what tools or  
17 equipment do you use as part of your job?

18 A. Internet, phone. I mean tickets. Or what equipment are  
19 you talking --

20 Q. Do you use a phone?

21 A. Yes.

22 Q. And you use a computer?

23 A. Yes.

24 Q. You have e-mail?

25 A. Yes.

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- 1 Q. BY MR. CONNOR: Ms. Cotton, do you know Tia Harris?
- 2 A. Yes, sir.
- 3 Q. And how do you know Tia Harris?
- 4 A. I've known her when I worked over in HP.
- 5 Q. Is -- do you know what office? Does she have an office?
- 6 A. Yes, sir.
- 7 Q. Is it in the same area you're in?
- 8 A. No, sir.
- 9 Q. Do you know where her office is?
- 10 A. When the employees come in through the employee entrance
- 11 door, it's an office to your right that separates from the
- 12 warehouse.
- 13 Q. Is it in a security -- is access to that area in any way
- 14 limited?
- 15 A. Yes.
- 16 Q. How is it limited?
- 17 A. Regular employees, we don't -- your badge don't scan to
- 18 let you in. You can't have access to it.
- 19 Q. Now, is Tia in the same building that you're in?
- 20 A. She's in the same building, but it's a wall that
- 21 separates from where we are.
- 22 Q. Is she ever -- do you ever see her in your break room?
- 23 A. No, sir.
- 24 Q. Do you know what her hours of work are?
- 25 A. No, sir, I don't. But at the time when I worked in HP,

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- 1 I think she would come in like 6:00 in the morning.
- 2 Q. Was that different from other people that worked in HP?
- 3 A. Yes, sir.
- 4 Q. And how was it different?
- 5 A. Hours varies. Sometimes it depends on the volume of the
- 6 work.
- 7 Q. During the time that you were -- is HP the account that
- 8 Tia is assigned to?
- 9 A. Yes, sir.
- 10 Q. And during the time that you were in HP, did you ever
- 11 see -- did you have reason to know what Tia's job was at that
- 12 point?
- 13 A. No, sir.
- 14 Q. Did you ever see her on the floor?
- 15 A. I saw her on the floor maybe once or twice.
- 16 MR. CONNOR: I don't have anything further.
- 17 MR. BODZY: Can we see any Jencks statements?
- 18 MR. HEARNE: There are a total of three statements. One
- 19 relating to the current issues dated September 20th, 2011.
- 20 There are two prior statements. The one related to this case
- 21 is about two pages of text. And we have another one dated
- 22 September 19th, 2009, mostly redacted, a small amount of text
- 23 on five pages. Then we have a three-page mostly redacted
- 24 statement from November 12th of 2009.
- 25 JUDGE RINGLER: All right, why don't we give it until --

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1 A. Yes.

2 Q. And I think everybody at OHL has a security badge; is  
3 that right?

4 A. We have a work badge, yes.

5 Q. Has a work badge. And it's coded so that only certain  
6 employees can go to certain areas; is that right?

7 A. Yes.

8 Q. And in the office where she works, who else has access  
9 to that office?

10 A. People that work in Inventory and Management.

11 Q. And team leads, right?

12 A. I believe team leads; I'm not sure.

13 Q. Okay. And Tia doesn't have a cubicle like you do,  
14 right?

15 A. No, sir.

16 Q. She shares a desk? Or do you know?

17 A. Not that I know of.

18 Q. Okay. On what occasion will you go out to the warehouse  
19 floor?

20 A. Daily.

21 Q. To do what?

22 A. I will go out to the gate and I will call my manager on  
23 the radio to let him know that I have orders ready.

24 Q. You have the what ready?

25 A. We have a radio.

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1 ULP but also to Objections 10 and 11 and also to challenges.

2 JUDGE RINGLER: Okay.

3 **DIRECT EXAMINATION**

4 Q. BY MR. CONNOR: Ms. Wells, I'm Glen Connor. I'm the  
5 attorney for the Steelworkers.

6 You indicated that you worked in HP; is that correct?

7 A. That's correct.

8 Q. Since you've been in HP, have you had occasion to meet a  
9 woman -- or have you had an occasion to meet Tia Harris?

10 A. Yes, I have.

11 Q. And how do you know Tia Harris?

12 A. I see her every morning.

13 Q. Is she -- as far as you know is she in HP as well?

14 A. She's in HP.

15 Q. And during the time that -- well, let me ask you. Do  
16 you ever see -- during the course of a normal day, how often  
17 do you see Tia?

18 A. Maybe twice.

19 Q. And where do you see her?

20 A. I see her coming in. And then I might see her going to  
21 lunch when she come out of get something at the drink  
22 machine.

23 Q. You ever see her on the floor?

24 A. No.

25 Q. Have you ever seen her pick?

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- 1 A. No.
- 2 Q. You ever seen her operate any of the lifts or jacks that
- 3 carry product?
- 4 A. No.
- 5 Q. Have you -- when, if ever, have you seen her use any of
- 6 the equipment that other people on the floor use?
- 7 A. I've never seen her.
- 8 MR. GOODWIN: Object to the term other people. Be more
- 9 specific.
- 10 Q. BY MR. CONNOR: Other operators, inventory specialist,
- 11 or other people that work in the warehouse?
- 12 A. I've never seen her operate no kind of equipment.
- 13 Q. Are you familiar with the area that she works in?
- 14 A. I am.
- 15 Q. Have you ever been in that area?
- 16 A. I have.
- 17 Q. And how do you get into that area?
- 18 A. Either let the guard -- I have the guards to open the
- 19 key to let me in, his badge allows him to go in and out.
- 20 Q. And is there anything -- any signs on the door?
- 21 A. It says, "Unauthorized Employees Only" I mean
- 22 "Unauthorized Employees" -- or "Authorized Employees Only."
- 23 Q. And you're not one of those authorized people; is that
- 24 correct?
- 25 A. No.

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1 that?

2 MR. HEARNE: No.

3 **REDIRECT EXAMINATION**

4 Q. BY MR. CONNOR: Ms. Wells, you said that you're on the  
5 back end. All the employees share -- all the warehouse  
6 employees go to a common break room; is that correct?

7 A. That's correct.

8 Q. Do you ever see Tia Harris in that break room?

9 A. Never.

10 MR. CONNOR: Nothing further.

11 JUDGE RINGLER: All right.

12 **RECROSS-EXAMINATION**

13 Q. BY MR. GOODWIN: Do you know where Tia Harris goes for  
14 her breaks and lunch?

15 A. She breaks in the break room downstairs in the -- I mean  
16 in the authorized break room.

17 Q. Do you know if she goes to her car during lunch? If you  
18 know?

19 A. I only see her in the morning and I see her come out to  
20 the vending machines and then back into the office.

21 Q. The vending machine in the break room?

22 A. Downstairs in the hallway, not the break room, but the  
23 hallway downstairs.

24 Q. In the hallway. There's a vending machine in the  
25 hallway?

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1 clothes and sat back down and never said a word to him at  
2 all.

3 Q. Okay. And for how long would you estimate Mr. Smith  
4 stood, standing near you like that?

5 A. I would say maybe for another 10 to 15 minutes to the  
6 entirety of the meeting, until Mr. Coleman adjourned the  
7 meeting. So I would say another 10 minutes, he stood like  
8 that.

9 Q. Okay. And what happened as the meeting drew to a close?

10 A. Okay, as the meeting drew to a close and they adjourned  
11 the meeting, I stood up. Mr. Smith blocked my path where I  
12 couldn't walk straight. I had to walk around him. And as I  
13 was walking away, I heard Mr. Smith clearly say, "He thinks  
14 he's something special. I got something for him." That's  
15 what he said.

16 Q. Do you know who he was speaking to when he said that?

17 A. Basically he was speaking in general. I don't know who  
18 he was talking to. I never turned around to acknowledge it.  
19 I kept going straight forward out the door. I never turned  
20 around to acknowledge Mr. Smith at after that.

21 Q. Do you have an opinion or belief as to who Mr. Smith was  
22 directing that comment to or who he was speaking about?

23 A. Well, he was saying it loud enough for me to hear it.  
24 And I'm the only person who he had just got through standing  
25 over. So he had to be talking to me.

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1 Respondent's answer that they would concede knowledge of  
2 Ms. Smith's union activities.

3 JUDGE RINGLER: Understood, understood. Given that  
4 you're in agreement that it's authentic and it's a business  
5 record, then you're solely objecting based on relevance. I  
6 do find it to be relevant.

7 So I will admit 36.

8 **(General Counsel's Exhibit 36 received in evidence.)**

9 Q. BY MR. HEARNE: Ms. Smith, did you work on June 8th of  
10 2011?

11 A. Yes, sir.

12 Q. On that workday, do you recall another employee in your  
13 account raising an issue about some red ink pens?

14 A. Yes, sir.

15 Q. Who was that employee?

16 A. Stacey Williams, that's our team lead.

17 Q. He's your team leader?

18 A. Yes, sir.

19 Q. These red pens -- just so we understand what they're  
20 for, what are these red pens used for?

21 A. They're basically used just to do my work. We just  
22 write in red ink. Most of the auditors write in red ink.

23 Q. So the red pens are something you use every day for your  
24 job?

25 A. Yes.

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		<u>I N D E X</u>				<u>VOIR</u>
		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1						
2						
3	<u>WITNESSES</u>					
4						
5	Jill McNeal	555	576	593	--	--
6		561		597		
7						
8	Jerry H. Smith	599	631	651	--	--
9		623				
10						
11	Sandra Hayes	653	670	688	691	--
12		666				
13						
14	Glenora Rayford	693	725	738	739	--
15		714		739		
16						
17	Helen Herron	742	769	--	--	--
18		759				
19						
20	Sharon Shorter	780	--	--	--	--
21						
22	John McNamee	796	800	808	808	--
23			804			
24						
25	Richard James	809	815	--	--	--
26						
27	Jennifer Sims	824	844	892	896	826
28			885	898	897	
29						

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1	<u>E X H I B I T S</u>		
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	ADMINISTRATIVE LAW JUDGE'S		
4	ALJ-1 and ALJ-2	823	823
5	GENERAL COUNSEL'S		
6	GC-6 (c)	603	611
7	GC-39	614	615
8	GC-45 (a)	849	850
9	GC-45 (c)	872	878
10	GC-45 (d)	853	854
11	GC-45 (f)	877	878
12	GC-77	792	793
13	GC-78	792	794
14	GC-79	792	794
15	UNION'S		
16	U-1	821	822
17	RESPONDENT'S		
18	R-7	692	692
19	R-8	826	828
20	R-9	834	835
21	R-10	835	836
22	R-11	838	838 - Withdrawn
23			
24			
25			

1 Q. When Rachel Chasen-Maxi came into the area, what if  
2 anything did you see her do regarding the punches on the  
3 timecards?

4 A. I know at one time I saw her looking at her own time.  
5 And she was late on several instances. So whether she was  
6 making changes to her own time, I don't know.

7 Q. And she made changes on other employees; is that  
8 correct?

9 A. I'm assuming, yes.

10 MR. BODZY: Objection to the speculation.

11 JUDGE RINGLER: Let me hear the question again.

12 Q. BY MR. CONNOR: What if anything did you see her do  
13 regarding other employees' time?

14 A. By her having access, I mean she could have done  
15 anything.

16 Q. How do you know when had access?

17 A. I know she had access, because I saw her looking at her  
18 own. And I know with what she was doing, she had that  
19 Unitime access.

20 Q. And during the time when you were a supervisor or now  
21 that you're a lead but not a supervisor, do you have Unitime  
22 access?

23 A. No regular employee that hits, that punches the clock  
24 has access to Unitime.

25 Q. Who has access to Unitime?

1 person that you had a meeting with about Rachel's position?

2 A. I spoke with Alfreda. And Alfreda basically said that  
3 she didn't know what was going on, that all she know is that  
4 or all she knew is that Rachel was brought on after Greenlee  
5 closed, and she basically didn't have any idea what her job  
6 responsibility was because she didn't report to her.

7 Q. Okay. And was Alfreda your supervisor?

8 A. She was.

9 Q. And she indicated she didn't know who Rachel's  
10 supervisor was; is that right?

11 A. At the time, she didn't know. She assumed that it was  
12 Randy.

13 Q. What did duties if any did you know of or what duties  
14 did you see Rachel performing at this time?

15 A. Basically, during the morning meetings, she would  
16 basically give feedback in regards to or relative to what  
17 the associates were supposed to be doing in conjunction to  
18 what they wasn't doing.

19 Q. Explain to me what you mean by how fast they were  
20 working or how efficiently they were working?

21 A. How fast, how efficient, the production, and she made  
22 statements that if -- she did, actually, she did one-on-  
23 ones.

24 Q. What do you mean one-on-ones?

25 A. She basically went to employees individually and spoke

1 to them about their production. And gave feedback, various  
2 feedback based upon whether they were I guess on upside  
3 down, up, or downside of their production.

4 Q. What was your understanding of the purpose of those  
5 meetings?

6 A. I really don't know.

7 Q. When, if ever, did you see Rachel on the floor other  
8 than those meetings?

9 A. Only to deal with basic RedPrairie and the computer.

10 Q. Can you tell me what you understand RedPrairie to be?

11 A. RedPrairie is basically a gauge of our production that's  
12 not -- it's not gauged through our OHL campuses. It's just  
13 basically I think our campus and one other.

14 Q. Were you a RedPrairie user when you were a supervisor?

15 A. No.

16 Q. As a lead, are you a RedPrairie user?

17 A. Can you explain that, please?

18 A. Do you have access to the RedPrairie -- well, RedPrairie  
19 is a software program.

20 A. Yes.

21 Q. Do you have access to the RedPrairie system as a lead?

22 A. I do not.

23 Q. Would you ever see Rachel picking orders?

24 A. No.

25 Q. Did you ever see her shipping orders?

1 A. No.

2 Q. Did you ever see her engage in any of the activity that  
3 an operator I engages in?

4 A. To be honest or to be frank, she couldn't do something  
5 that she didn't know how to do. So she didn't --

6 MR. BODZY: Objection. Speculation.

7 THE WITNESS: It's not speculation because --

8 JUDGE RINGLER: Overruled. I overruled it so you can  
9 answer the question.

10 THE WITNESS: Well, she, I mean, because she actually  
11 came to myself and several other people asking how to do  
12 certain functions.

13 Q. BY MR. CONNOR: What would she ask you how to do, for  
14 example?

15 A. She asked how to pick. She asked how to go onto the  
16 system. So none of these functions she had knowledge of.

17 Q. You were a trainer, so you were happy to help, right?

18 A. I was.

19 Q. Okay. Now after you talked to Ms. Owens, did you have  
20 any other conversations about Rachel's job responsibilities?

21 A. I spoke with Phil Smith and Karen White.

22 Q. And what was the purpose of speaking to Phil Smith and  
23 Karen White?

24 A. Basically, I don't know if it was an appease session,  
25 but it was told to me that I had issues regarding Rachel

1 getting this position. And basically telling me that she's  
2 got the job and we've tried to place people, and it is what  
3 it is.

4 Q. Did they ever tell you what her job was?

5 A. They said that she was doing -- in Greenlee, they said  
6 that she was doing admin functions, so they had to get her  
7 something comparable to what she was doing there.

8 Q. Now, Ms. McNeal, during when Rachel would give  
9 instructions on the floor, who would she give instructions  
10 to?

11 A. She would, again, as I said before, she would do one-on-  
12 one. She would basically go to the associates and speak  
13 with them in regards to their production, their numbers.

14 Q. Did she ever provide you any instructions on what jobs  
15 to perform or not to perform?

16 A. She approached me on one occasion and said that I was  
17 working too much and that I needed to instead of go under  
18 regular functions, that I needed to go into an LM-42  
19 function which was under a lead function, and that's because  
20 my productivity wouldn't be gauged at that point.

21 Q. Do you have any idea why she told you to do that?

22 A. Because I moved about the account. I picked. I  
23 shipped. Whatever was needed, that's what I did.

24 Q. Was it your understanding you had to follow the  
25 instructions that she gave you?

1 A. It was. And if I can interject, she even changed my  
2 password. It was JMcNeal in the beginning when I was under  
3 different functions and she came back and changed it to  
4 JMcNeal2.

5 Q. Does a lead have the ability to change passwords on the  
6 computer?

7 A. No.

8 Q. Does the supervisor?

9 A. Yes.

10 Q. After you talked to Phil Smith and Karen White, was  
11 there any change in your circumstances?

12 A. No, there wasn't. Can I go back to something? You said  
13 were we able to change passwords.

14 Q. I'll just ask you questions, Ms. McNeal.

15 A. Okay.

16 Q. Ms. McNeal, during the time that you've been at OHL,  
17 have you met an employee named Tammy Stewart?

18 A. I have.

19 Q. And how do you know Tammy Stewart?

20 A. Just basically throughout the years, work related.

21 Q. Does she work in your department?

22 A. She does not.

23 Q. Have you ever worked with her?

24 A. I have.

25 Q. Where have you worked with her?

1 JUDGE RINGLER: All right. So you felt that it was  
2 futile to report the current comment?

3 THE WITNESS: Yes. Everything has a consistency  
4 pattern. Anything that you report, nothing is done.

5 JUDGE RINGLER: All right. I think that's enough depth  
6 for me to think about it, rather than getting into all the  
7 details of the one issue.

8 MR. HEARNE: Okay. Then we have no additional  
9 questions.

10 JUDGE RINGLER: Okay. Mr. Connor, anything from you?

11 MR. CONNOR: I'm sorry, just very briefly.

12 **REDIRECT EXAMINATION**

13 Q. BY MR. CONNOR: Ms. McNeal, you indicated on Rachel's  
14 work area, you indicated that there was a Ms. Kilpatrick in  
15 close proximity and Patsy in close proximity. Are there  
16 other offices in close proximity to her area?

17 A. Yes, the managers, supervisors.

18 Q. Okay. What managers?

19 A. There was Randy Phillips and Alfreda Owens.

20 Q. And how far was Randy's work area from -- Randy's work  
21 area from Rachel's work area?

22 A. They were pretty much adjacent to each other.

23 Q. Okay. What about Rachel's work area and Alfreda's work  
24 area?

25 A. They were in the same office.



1 Q. Like how many feet apart were they -- or let me ask you  
2 the question this way --

3 A. They were actually connected.

4 Q. How many steps was it approximately from Rachel's  
5 workstation to Alfreda's workstation?

6 A. Probably from here to here. From this where I'm sitting  
7 to where that desk it.

8 Q. To where OHL's lawyer is sitting?

9 A. Um-hum.

10 Q. Would you say that's about 20 feet?

11 A. Yes.

12 Q. Okay. And how far was it from Rachel's work area to  
13 Randy's work area?

14 A. About the same.

15 MR. CONNOR: Nothing further, Judge.

16 JUDGE RINGLER: Okay. Any recross?

17 MR. BODZY: No, no further questions.

18 JUDGE RINGLER: Okay. Very good. Thank you, ma'am.  
19 You are excused.

20 THE WITNESS: Thank you.

21 **(Witness excused.)**

22 JUDGE RINGLER: Ready to call another one?

23 MR. HEARNE: Yeah, get Jerry.

24 JUDGE RINGLER: All right, we'll go off the record.

25 **(Off the record.)**

1 everything that I laid on the table for the Union, she was  
2 balling it up.

3 Q. And just so that we're clear, that day, June 22nd, that  
4 was not more copies of that district court decision, General  
5 Counsel Exhibit 4. That was different material you had  
6 brought in?

7 A. Yes, ma'am.

8 Q. And did you ever have a discussion with Ms. Owens about  
9 what you had seen?

10 A. Yes, ma'am. At our 10:00 break, I asked Helen to go in  
11 there with me to go to her office. But when I went in the  
12 break room, she was standing at the vending machine. And I  
13 went to her and asked her why was she balling up our  
14 literature. And she turned around and looked at me with a  
15 face, it wasn't me. Then we turned around and went back out  
16 to the warehouse.

17 Q. You said we turned around, you are referring to you and  
18 Helen?

19 A. Yeah, me and Helen turned around and walked back out to  
20 the warehouse.

21 JUDGE RINGLER: So she denied that she did it?

22 THE WITNESS: Yeah, she denied it.

23 JUDGE RINGLER: But you saw her?

24 THE WITNESS: Yes, sir.

25 Q. BY MS. MOHNS: Okay. Let's move onto a different

1 A. In the office.

2 Q. You described earlier when you were describing the break  
3 room and you were talking about Randy's office; is that  
4 correct?

5 A. Yes, sir.

6 Q. Where is Rachel's office in relation to Randy's office?

7 A. Right next to it.

8 Q. What position does Randy have?

9 A. Ops manager.

10 Q. Now, during the time that you've been at Waterpik, when,  
11 if ever, do you see Rachel Maxi on the floor?

12 A. You don't, till she comes and tell you about your  
13 production.

14 Q. Where is she most of the time?

15 A. In her office.

16 Q. Do you have a judgment as to how much of her time she  
17 spends in the office?

18 A. All day.

19 Q. In addition to Randy's office, are there any other  
20 supervisors' office close to Rachel's area?

21 A. Yes.

22 Q. Who is that?

23 A. Alfreda Owens.

24 Q. About how far is it from Alfreda's work area to Tammy's  
25 work area, I'm sorry, from Alfreda's work area to Rachel's

1 work area?

2 A. Right next door.

3 Q. And how far is it from Rachel's work area to Randall's  
4 work area?

5 A. Right next door.

6 Q. Now, do you ever have occasion to have conversations  
7 with Rachel about work?

8 A. Yes, sir.

9 Q. And under what circumstances do you have conversations  
10 with Rachel?

11 A. My production.

12 Q. What does she say? Tell me what she talks to you about?

13 A. She would come out on the floor and tell me that my  
14 production is down low, I need to get it up high, and if I  
15 don't what's going to happen I'll get wrote up, I'll get  
16 disciplined.

17 Q. So what does she tell you will happen if your production  
18 doesn't get up?

19 A. That I'll be wrote up for it.

20 Q. How often do you have these conversations or how often  
21 do you have a conversation?

22 A. Every time my production get low, she'll come out there  
23 and tell us, come out there and tell me.

24 Q. Do you ever see her at any other meetings other than  
25 when you have -- when you meet with her one-on-one?

1 A. No, sir.

2 Q. Now, the break room is right there. How far is it from  
3 that break room to Rachel's work area? The break room where  
4 you were describing that the Union literature was destroyed  
5 at, how far is it from there to Rachel's work area?

6 A. It's not far. It's down the hallway to your right.

7 Q. How many steps?

8 A. I'm not good at --

9 Q. How long would it take you to walk from the break room  
10 to Rachel's office, more than a minute?

11 A. About 10 seconds from the break room, 10, 15 seconds.

12 Q. Have you ever seen Rachel in the break room?

13 A. No, sir.

14 Q. Do you ever see her in the break room for lunch?

15 A. No, sir.

16 Q. Now, let me ask you, Ms. Rayford, some questions about  
17 the election. During the election, are you familiar with  
18 the T-shirts -- well, let me ask you this question first,  
19 Ms. Rayford. During the course of the campaign, did the  
20 Company have any reason to know that you were a supporter of  
21 the Union?

22 A. Yes.

23 Q. How did they know?

24 A. I had my T-shirt on, my hat, my pin. I wore it every  
25 day.

1 Q. Do you know or have you met during the time you've been  
2 at OHL a worker by the name of Rachel Maxi?

3 A. Yes.

4 Q. And where did you know Rachel from?

5 A. She was working in Waterpik.

6 Q. Do you know where Rachel's work area was?

7 A. In the office where Randy's office at.

8 Q. Would you ever have any conversations with Rachel about  
9 your work?

10 A. Yes. She approached me on the floor.

11 Q. What would she say to you?

12 A. She told me my production, I need to get my numbers back  
13 up because if not I could get wrote up, but it's not in  
14 trouble, just keep it up at a certain level.

15 Q. What was your understanding what would happen if you  
16 didn't?

17 A. She told me I would get a write-up.

18 JUDGE RINGLER: Would she give it to you, the write-up?

19 THE WITNESS: She told me she would give it to me and I  
20 assumed she would. I didn't let it get down, so I wouldn't  
21 know.

22 Q. BY MR. CONNOR: Did you ever have any conversations with  
23 her about whether you had clocked in appropriate or not?

24 A. She got on me once about the kiosk because she told me  
25 just like I'm clocking in at the punch clock for my time, I

1 had to clock at the kiosk, too. And she had did it for me,  
2 straightened it out and clocked in for me at the kiosk, but  
3 from now on I need to clock. When I hit the regular clock,  
4 go to the kiosk and clock.

5 JUDGE RINGLER: What is the kiosk?

6 THE WITNESS: Just to keep up with your production.

7 Q. BY MR. CONNOR: Have you met Tia Harris?

8 A. Yes.

9 Q. How do you know Tia Harris?

10 A. I used to work in HP with her.

11 Q. Do you know who Tia Harris reported to?

12 A. Lisa Taylor at the time I was in HP.

13 Q. Do you know where her office is?

14 A. It was across from Lisa Taylor where management be.

15 Q. And what building is it in?

16 A. It's in the HP building.

17 Q. Is that 5510?

18 A. Yes.

19 Q. Is that a secure area?

20 A. Yes.

21 Q. How do you get into it?

22 A. A manager have to let me in.

23 JUDGE RINGLER: How long ago was it that you worked  
24 there?

25 THE WITNESS: Since I've been in Waterpik and I'm not

1 she said your production is not in trouble, you don't have  
2 to worry about it. But if you don't keep it up, you can get  
3 wrote up. But you don't have nothing to worry about now.  
4 Q. Getting rolled [sic] up means what, getting written up?  
5 A. Wrote up, like written up.  
6 Q. Now, it's very important. Did she say she would write  
7 you up or that she --  
8 A. She said you can get wrote up. So I assumed she could  
9 write me up.  
10 Q. But she didn't say that, that she would do it, did she?  
11 A. She didn't say she wouldn't.  
12 Q. But she didn't say she could, did she?  
13 A. She didn't say either/or, sir.  
14 Q. I'm sorry?  
15 A. She didn't say either/or. She didn't say it wouldn't be  
16 her or whoever.  
17 Q. She never told you that she would be the one to write  
18 you up, did she?  
19 A. She never told me that she wouldn't.  
20 Q. The question was she never told you that she would be  
21 the one to write you up; isn't that true?  
22 A. I answered that, sir. She never told me either/or.  
23 Q. Now, when she told you that you had to clock into the  
24 kiosk, that again was so your production could be properly  
25 recorded, right? Because that's what she does. She works



I N D E X						
						VOIR
<u>WITNESSES</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
5	Tondra Mitchell	907	909	916	919	--
6				922	922	
7				923		
9	Shirley Milan	924	931	944	946	--
10			942	948	948	
12	Lee Smith	949	961	990	--	957
13			981			
15	Stacey Williams	995	1004	1027	1030	--
16			1026		1031	
18	Eric Nelson	1032	1036	--	--	--
19			1049			
21	Kedric Smith	1050	1069	1091	1093	--
22			1089			
24	Jim Steele	1096	1106	1120	--	--
25			1116			
27	Randall Coleman	1122	1132	1143	--	--
28			1140			
30	LeRoy Heath	1144	1161	--	--	--
31			1194			
33	Karen White	1195	1204	1212	--	--
34			1209			
36	Evangelia Young	1213	1233	1274	1279	--
37			1273		1281	
39	Sara Wright	1283	1302	--	--	--
40			1317			

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<u>E X H I B I T S</u>			
<u>EXHIBITS</u>	<u>FOR IDENTIFICATION IN EVIDENCE</u>		
GENERAL COUNSEL'S			
GC-22	1249		1250
GC-30	1272		1273
GC-46 (b)	1250		1252
GC-51 (b)	1252		1253
GC-53	1251		1252
GC-60	1322		1323
GC-66	1167		1168
GC-67	1169		1173
GC-73	1314	Not Offered	
GC-75	1254		1254
UNION'S			
U-20	1209		1212
U-21	1209		1212
RESPONDENT'S			
R-11	930		930
R-12	956		958
R-13	959		960
R-14	1002		1002
R-15	1060		1062
R-16	1066		1069
R-17	1155		1156
R-18	1158		1159

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1		<u>E X H I B I T S</u>	
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	R-19	1159	1160
4	R-20	1201	Not Offered
5	R-21	1229	1230
6			
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1 A. Customer service.

2 Q. As a customer service representative, do you do billing?

3 A. Yes.

4 Q. Invoicing to Roland?

5 A. Yes.

6 JUDGE RINGLER: Still with the challenges I take it?

7 MR. BODZY: It is.

8 JUDGE RINGLER: Okay.

9 Q. BY MR. BODZY: And was there a period of time when you

10 were out for a while and someone had to fill in for you?

11 A. Yes.

12 Q. Okay. Who filled in for you with respect to your duties

13 of billing the Roland account?

14 A. Dwayne McIntire (ph.).

15 Q. Okay. Did Rachel --

16 JUDGE RINGLER: I'm sorry. I couldn't hear. Dwayne

17 McIntire is what she said?

18 THE WITNESS: Yes, Dwayne McIntire.

19 Q. BY MR. BODZY: Did anyone else fill in for you?

20 A. As for doing billing?

21 Q. Yes.

22 A. Not doing billing.

23 Q. Okay. What about -- who else filled in for you? Did

24 anyone else fill in for you for any other part of your job

25 while you were out?

1 A. Rachel closed orders and Brittany closed orders.

2 Q. Okay. When you say Rachel, are you referring to Rachel  
3 Maxi-Chasen?

4 A. I'm not for sure of her last name.

5 Q. Okay. Can you describe what she looks like for us?

6 A. Caucasian, I think she has blonde hair, brownish or some  
7 color.

8 Q. Okay. Do you know what account she came from to fill in  
9 for you?

10 A. I want to say Greenlee, but I think she's in McLean now.

11 Q. Okay.

12 JUDGE RINGLER: Mr. Connor, can you folks stipulate that  
13 she's describing Rachel Maxi-Chasen based on the  
14 description?

15 MR. CONNOR: Yes, we will.

16 JUDGE RINGLER: Okay.

17 Q. BY MR. BODZY: And when you say she closed orders, what  
18 did that involve?

19 A. When the pickers go out and pick an order, and they  
20 fulfill a request, and have to have maybe like a FedEx order  
21 or someone has to be called in and come pick an order up,  
22 once the driver get there, they close that particular order  
23 out. If it's FedEx order, they go ahead on and close it out  
24 right then.

25 Q. What period of time was this when Ms. Maxi-Chasen was

1 Q. Okay. Which account are you assigned to?

2 A. National Geographic.

3 Q. Which building is that in?

4 A. 5510.

5 Q. Is that right next to the Fiskars account?

6 A. Yes, uh-huh.

7 Q. Do you know an employee named Carolyn Jones who works or  
8 worked at OHL?

9 A. Yes, I do.

10 Q. Okay. Which account was she on?

11 A. She was on the Fiskars account.

12 Q. Who is your supervisor?

13 A. Sandra Pugh is my supervisor.

14 Q. And who's your manager?

15 A. Lisa Taylor.

16 Q. Mr. Smith, do you recall OHL having meetings where they  
17 discussed the Union?

18 A. Yes, uh-huh.

19 Q. And do you recall whether or not you ever made comments  
20 at any of those meetings?

21 A. Yes, I have.

22 Q. Okay. And what do you recall commenting at the meeting  
23 conducted by OHL?

24 A. One of the comments I had made was that I feel that OHL  
25 does not need a union.

1 A. She was telling me that I was scared and was telling  
2 me -- she went to using words such as UT and things like  
3 that.

4 Q. Okay. And when did she first comment, make the comment  
5 UT to you?

6 A. It was shortly after we had -- I want to say we had a  
7 May 9th meeting or May 5th, somewhere along in there, but it  
8 was a couple of days after that, she started referring to me  
9 as UT.

10 Q. Okay. And did you speak at that May 5th or 9th meeting?

11 A. Yes, sir.

12 Q. Okay. Is that where you made the comments you described  
13 already?

14 A. Yes.

15 Q. And so when she said UT to you, how long after that  
16 meeting was it?

17 A. Every day. If went on for a couple of weeks.

18 Q. Okay. Does Ms. Jones pass by your work area when she --

19 A. In order to get to the employee restroom that's on the  
20 floor, she had to walk through our area.

21 Q. Okay. And as she was walking through, did she call you  
22 UT?

23 A. Yes.

24 Q. Okay. And how long did this go on for?

25 A. I know at least up to the 17th.

1 Q. Okay.

2 A. And probably a couple of days after that.

3 Q. And you said it was on a daily basis?

4 A. Yes, uh-huh. Whenever she saw me.

5 Q. Okay. And when she first started calling you UT, did  
6 you know what she meant?

7 A. No.

8 Q. Okay. What did you think she meant?

9 A. Being naive to the situation, it may sound a little  
10 crazy, but we were wearing some orange shirts at that  
11 particular time, everybody that wasn't a union supporter,  
12 and I took it as she was referring to University of  
13 Tennessee because I was wearing an orange shirt.

14 Q. And did you have conversations with any of your  
15 coworkers about Ms. Jones calling you UT?

16 A. Yes, I had conversations with them about UT, but it was  
17 after I found out what UT meant.

18 Q. Okay. Did you -- which coworkers did you have  
19 conversations with?

20 A. Cara Cobb (ph.) known as Crystal Cara Cobb, Jennifer  
21 Sims, Cheryl, I can't think of Cheryl's -- Cheryl Captain  
22 (ph.). That's her last name, Cheryl Captain.

23 Q. At some point, did you have a discussion with Ms. Jones  
24 about what UT meant?

25 A. Yes.



1 Q. Okay. Can you tell us when that was?

2 A. It was on the 17th of May, and I remember that so  
3 clearly because it was my cousin's birthday that day.

4 Q. Okay. And where did this conversation take place?

5 A. It happened in the parking lot. I was on my lunch  
6 break, and I was headed to my automobile.

7 Q. Okay. So you were walking out the door of the 5510  
8 Building?

9 A. Yes.

10 Q. And where was Ms. Jones?

11 A. Ms. Jones and -- she was sitting at the picnic table  
12 that's by the 5510 Building.

13 Q. Okay. And was anyone with Ms. Jones?

14 A. Yes, Renal Dotson.

15 Q. And just take us through the verbal interaction that you  
16 had with Ms. Jones that day.

17 A. As I was walking to my automobile, she said, UT, and so  
18 I was probably about three feet away from my vehicle, and I  
19 just turned around, I just asked, I said, what does UT mean?  
20 And she said Uncle Tom. I was furious about this because  
21 that is, from a black man's perspective, I'm just going to  
22 tell you that right here, for a black to call another black  
23 Uncle Tom is equivalent to a white person calling a black  
24 person the N word. It's racist, and it was unnecessary.

25 Q. And you were upset about it?

1 Q. Okay. And what did you tell Jennifer Sims?

2 A. I told Jennifer, I said, you won't believe what just  
3 really just took place, and I told her the conversation that  
4 I had with Carolyn and, you know, I just took her through  
5 the steps of what was said.

6 Q. Okay. After your conversation with Carolyn --

7 A. Uh-huh.

8 Q. -- that you just described, did you come to have an  
9 understanding as to what she had meant when she had called  
10 you UT previously?

11 A. Most definitely because she explained herself.

12 Q. Okay. Now, Mr. Smith, let me ask you whether you  
13 reported Carolyn Jones' comment to anyone in management?

14 A. Yes.

15 Q. Who did you report to?

16 A. Lisa Taylor.

17 Q. And did you give a statement to Ms. Taylor?

18 A. Yes, uh-huh.

19 **(Respondent's Exhibit 12 marked for identification.)**

20 Q. BY MR. BODZY: Mr. Smith, I've handed you what's been  
21 marked as Respondent's Exhibit 12. Do you recognize that  
22 document?

23 A. Yes, I do.

24 Q. Okay. Is that the statement that you gave to Lisa  
25 Taylor?

1 just say my name, you know, they were having a conflict. So  
2 Phil, he didn't, he didn't state her name because he just  
3 came in a room where people was and just said, said, said a  
4 statement. So I mean I'm trying to play it back for you as  
5 best I can.

6 Q. Okay. And how long was the interaction between --

7 A. How long?

8 Q. Yeah.

9 A. About five minutes. About five minutes.

10 Q. And that was from the time Mr. Smith came into the break  
11 room until he left?

12 A. He came in the break room. I recall him leaving the  
13 break room and he came back.

14 Q. Okay.

15 A. And I recall Ms. Jones going downstairs and coming back.

16 Q. Did Ms. Jones go downstairs after Mr. Smith went  
17 downstairs?

18 A. As I'm thinking.

19 Q. Okay. Now, after this incident happened, were you ever  
20 approached by Ms. Jones regarding a statement or a piece of  
21 paper?

22 A. She did have a piece of paper. When I got the sheet of  
23 paper, it was just a list of names, and I noticed everybody  
24 who was in the break room names were on the list. That's  
25 all I seen that was on the paper. That's all I seen.

1 Q. Okay. And when -- first of all, did she approach you or  
2 did you approach her in the conversation where you first saw  
3 the paper?

4 A. She approached me.

5 Q. Okay. And where were you at the time?

6 A. Picking.

7 Q. Out on the floor?

8 A. Yeah.

9 Q. Okay. And you said it had a -- well, let me, let me ask  
10 you this. How many pages was it that she showed to you?

11 A. On the side I signed, it was only one sheet, and it was  
12 just the last sheet of some that had the names on it. It  
13 had like six, seven names on it.

14 Q. Okay. And so when she showed you this one sheet --

15 A. Uh-huh.

16 Q. -- was there anything written above the names?

17 A. I couldn't tell you that because I -- the only thing I  
18 focused on was the names. I didn't know that there was an  
19 actual statement behind it for the simple fact I just seen  
20 the names and I just thought it was just a list of  
21 witnesses. So I didn't know that it was a statement on it.

22 Q. And, and on what you were looking at, just so we're  
23 clear, was there any writing above the names on the page you  
24 were looking at?

25 A. I couldn't tell you that. I couldn't tell you that.

1 A. We're a third party logistics provider. Basically we  
2 do, we do warehousing and fulfillment for companies that  
3 want to outsource it themselves. So we provide that service  
4 for companies that want to outsource.

5 Q. As Senior Vice President, do you have responsibility  
6 over a particular region?

7 A. Yes, I have responsibility over the South Region.

8 Q. Okay. And does that include the Memphis operations?

9 A. Yes, it does.

10 Q. Where's your office?

11 A. My office is in the 5510 Holmes Road Building.

12 Q. Is it on the HP side of the building or the other side  
13 of the building?

14 A. Yes, it's on the HP side.

15 Q. Mr. Coleman, when you park to go to your office, do  
16 you -- which parking lot do you park in?

17 A. I park in the HP parking, which is on the southeast  
18 corner of the 5510 Building.

19 Q. And do you ever on occasion pull directly up to the  
20 building?

21 A. Normally I don't try to park there because it says no  
22 parking, but there have been instances where I would pull  
23 up, get out of my car, go get something, if I had forgotten  
24 something or needed to run in quickly to get something, I'll  
25 pull there, go in and come back out.

1 Q. BY MR. BODZY: Good afternoon, Ms. White.

2 A. Hello.

3 Q. Just a few questions for you.

4 JUDGE RINGLER: What paragraphs?

5 MR. BODZY: This is going to complaint paragraphs --  
6 well, it's going to OHL's objections --

7 JUDGE RINGLER: Okay.

8 MR. BODZY: -- to the election.

9 JUDGE RINGLER: Okay.

10 MR. BODZY: But it is also going to complaint paragraph  
11 7(d) as in dog and then it'll also touch on very broadly  
12 13(b).

13 JUDGE RINGLER: And what objections specifically?

14 MR. BODZY: Specifically objections 1 and 2.

15 JUDGE RINGLER: 1 and 2, okay.

16 MR. CONNOR: You're talking about --

17 JUDGE RINGLER: OHL's objections.

18 JUDGE RINGLER: OHL 1 and 2. Okay. Thanks.

19 MR. BODZY: Sure.

20 Q. BY MR. BODZY: Ms. White, do you work for OHL?

21 A. I do.

22 Q. Okay. And what's your title?

23 A. I'm RVP of Memphis operations.

24 Q. When you say RVP, what does that stand for?

25 A. Regional Vice President.

1 Q. How long have you been Regional Vice President of  
2 Memphis Operations?

3 A. Approximately four, a little over four years.

4 Q. Okay. And do you have responsibility for all the  
5 Memphis operations?

6 A. I do.

7 Q. Who do you report to?

8 A. Randall Coleman.

9 Q. As part of your job responsibilities, did you  
10 communicate with employees about the Union?

11 A. I did.

12 Q. Did you attend group meetings where OHL conveyed its  
13 message to employees?

14 A. Sure, I did.

15 Q. And did you, did you conduct some of those meetings?

16 A. Yes.

17 Q. Okay. Do you recall a meeting in June of this year  
18 where a question was asked by an employee regarding union  
19 supporters going to work somewhere else?

20 A. Yes.

21 Q. Okay. Tell us first of all, where was that meeting?  
22 Which building was it in?

23 A. 5540 Holmes Road.

24 Q. Was that a meeting that you were conducting?

25 A. I believe Phil was conducting the meeting, started the

1 A. Uh-huh.

2 Q. Which accounts were they?

3 A. The Browne account and the HP account.

4 Q. And did you answer that question?

5 A. I did.

6 Q. Did you ever say that if the Union comes in, those  
7 accounts won't renew?

8 A. No.

9 Q. Okay. Did you ever say that those customers would pull  
10 out if the account -- if the Union came in?

11 A. No.

12 MR. BODZY: I'm going to show Ms. White an exhibit, but  
13 I only have one copy right now. We can make copies at the  
14 break.

15 JUDGE RINGLER: Sure.

16 MR. BODZY: I'll pass it around first.

17 Q. BY MR. BODZY: Ms. White, I've handed you a document  
18 that I've marked at the bottom, Respondent's 18.

19 MS. MOHNS: We already have Respondent's 18.

20 MR. BODZY: I apologize. Let's mark it Respondent's 19.

21 COURT REPORTER: We have 19.

22 MR. BODZY: All right. Let's mark it Respondent's 20  
23 then. I'm two exhibits behind.

24 **(Respondent's Exhibit 20 marked for identification.)**

25 Q. BY MR. BODZY: Ms. White, I've placed in front of you a



1 document that's now been marked Respondent's Exhibit 20. Do  
2 you recognize that document?

3 A. I do.

4 Q. Okay. Have you seen that document before?

5 A. Yes, sir.

6 Q. Okay. When did you see it before?

7 A. I don't recall the date, but I found -- where did I find  
8 it?

9 Q. Well, okay. Do you remember -- my question was when?  
10 Do you remember when it was in relation to the Union  
11 election that happened in July of this year?

12 A. It was several weeks before the election.

13 Q. Okay. And where did you find that document?

14 A. I was coming out of the HP conference room which is  
15 right next to the break room at 5510, and it was on the  
16 break room table in the HP break room.

17 Q. Okay. Have any hourly employees talked to you about  
18 that document?

19 A. Yeah, the same day.

20 Q. And what do you remember about that?

21 A. The second shift employees, we were doing the startup  
22 meeting, and afterwards, they were telling me that --

23 MR. CONNOR: Objection. Hearsay, Judge.

24 MR. BODZY: It's going to the knowledge of that  
25 document.

1 JUDGE RINGLER: Overruled. You can answer the question.

2 MS. MOHNS: I would object as to relevance. I don't  
3 understand --

4 JUDGE RINGLER: Well, I think there's an objection  
5 anyway. So let's see.

6 MS. MOHNS: I'm sorry. I'm sorry.

7 JUDGE RINGLER: Go ahead.

8 Q. BY MR. BODZY: Ms. White, what --

9 JUDGE RINGLER: It's getting late in the day though. I  
10 don't blame you. I'm sorry. I interrupted your question.

11 MR. BODZY: That's okay.

12 JUDGE RINGLER: Go ahead.

13 Q. BY MR. BODZY: Ms. White, what do you recall discussing  
14 with an employee about that document?

15 A. The employee told me they were passing these out on the  
16 parking lot when second shift was coming into work.

17 Q. What account was that employee from?

18 A. HP.

19 Q. How many employees are in the HP account --

20 A. 120.

21 Q. -- on the second shift?

22 A. Second shift, probably 50.

23 Q. And when you said they were passing them out, did you  
24 have an understanding as to who they was?

25 MR. CONNOR: Object to hearsay again?

1 JUDGE RINGLER: Yeah. No, no, I'm going to overrule it  
2 but, counsel, also be aware though that I'm kind of letting  
3 it in as background evidence but it's really worth very  
4 little unless you have somebody who actually saw it being  
5 passed out in terms of weight. So I might be letting it in,  
6 but don't be misled by that I'm going to give it any weight  
7 at all unless you actually have somebody who actually saw it  
8 being distributed, okay.

9 MR. BODZY: Okay.

10 Q. BY MR. BODZY: Ms. White, let's go back to the break  
11 room where you found that. Was that -- which break room was  
12 it?

13 A. The HP break room.

14 Q. Were there employees in there at the time?

15 A. No.

16 Q. Okay. Where was it located in the break room?

17 A. On one of the tables, the break tables.

18 Q. Ms. White, do you remember which employee discussed that  
19 flyer with you?

20 A. No, I don't recall.

21 MR. BODZY: That's all the question I have.

22 JUDGE RINGLER: Okay.

23 **CROSS-EXAMINATION**

24 Q. BY MS. MOHNS: Good afternoon, Ms. White. How are you?

25 A. I'm doing good.

1 JUDGE RINGLER: Let's go off.

2 (Off the record.)

3 JUDGE RINGLER: We're on the record.

4 Very good. Can you spell your name for us, first and  
5 last?

6 MS. YOUNG: It's Evangelia, E-v-a-n-g-e-l-i-a, Young,  
7 Y-o-u-n-g.

8 JUDGE RINGLER: All right. Please raise your right  
9 hand.

10 (Whereupon,

11 **EVANGELIA YOUNG**

12 was called as a witness by and on behalf of the Respondent  
13 and, having been first duly sworn, was examined and  
14 testified as follows:)

15 JUDGE RINGLER: Okay.

16 **DIRECT EXAMINATION**

17 Q. BY MR. BODZY: Good afternoon, Ms. Young.

18 A. Good afternoon.

19 Q. Were you formerly employed by OHL?

20 A. I was.

21 Q. And when did your employ with OHL end?

22 A. October 7, 2011.

23 Q. Okay. Did you leave voluntarily?

24 A. I did.

25 Q. Prior to leaving OHL in October of this year, what was

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1 your position?

2 A. Regional human resource manager.

3 Q. As the regional human resource manager, which operations  
4 did you have human resources responsibility over?

5 A. For the Memphis operation.

6 Q. Who did you report to?

7 A. I reported directly to Jamie Logel (ph.) of the  
8 corporate HR department. Prior to my leaving, they had just  
9 hired a senior HR manager which was Karen Kalzbrook (ph.)  
10 and I started to report to her, but that was only a few  
11 weeks.

12 Q. Okay. Do either Ms. Logel or Ms. Kalzbrook have offices  
13 in Memphis?

14 A. No, they do not. They are in the corporate office.

15 Q. Did you report to Karen White in some manner?

16 A. No, I only assisted Karen White. My direct report was  
17 to Jamie and the rest of the corporate team.

18 Q. Ms. Young, let me ask you whether you recall an employee  
19 named Carolyn Jones?

20 A. I do.

21 Q. And did it come to your attention at some point in May  
22 of this year that Ms. Jones had allegedly called an employee  
23 a UT?

24 A. Yes, it did.

25 Q. And can you tell us how that came to your attention?

1 sure, but I want to say it was the next day because they  
2 were still getting statements and stuff. So I think it was  
3 something like the 27th, that Thursday or Friday.

4 Q. Okay.

5 A. It had to be, yeah, it had to be the 27th.

6 Q. Okay. And then -- and that's when, that's when you and  
7 Ms. Miles discussed her coming down?

8 A. Yes.

9 Q. Okay. And did you discuss when she would actually  
10 physically travel?

11 A. Yes, I think we were going through the holiday weekend.  
12 So she was supposed to arrive there on June 1st.

13 Q. And did Ms. Miles travel to Memphis on June 1st?

14 A. Yes, she did.

15 Q. Had she ever been to Memphis, the OHL Memphis operations  
16 before?

17 A. No, that was her first visit there.

18 Q. And so on June 1st, did you all take any steps to  
19 further the investigation?

20 A. She didn't start on the investigation that day because  
21 again that was her first visit there. She hadn't met me.  
22 She hadn't met any of the management team. She didn't know  
23 the location. So I took that first day to say, hey, why  
24 don't I kind of take you, tour you, introduce you to some of  
25 the players, you know, because, you know, she needed to know

1 Q. All right. Ms. Young, I'm going to hand you what's  
2 previously been marked as Respondent's Exhibit 20. Do you  
3 recognize that document?

4 A. I do.

5 Q. Have you seen it before?

6 A. I have.

7 Q. Okay. Where did you see it?

8 A. On one of the break room tables at the 5510 Building,  
9 the HP account.

10 Q. Okay. Did you personally see it handed out to anyone?

11 A. No.

12 Q. Ms. Young, do you recall attending a union update  
13 meeting where an employee asked -- an employee named Tondra  
14 Mitchell asked a question?

15 A. Yeah, I'm sure.

16 Q. Okay. Let me --

17 A. Yeah.

18 Q. Let me direct you more towards what I'm talking about.  
19 Do you recall an employee asking a question in a meeting to  
20 discuss the Union about whether people who are upset should  
21 just get a job somewhere else or words to that effect?

22 A. Yeah, that statement was made in probably more than one  
23 meeting.

24 Q. Do you, do you recall any response being made to that?

25 A. As far as --

	<u>I N D E X</u>					VOIR
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1						
2						
3						
4						
5	Shannon Miles	1332	1350	1447	1454	1425
6			1437	1460	1459	
7					1461	
8						
9	Phil Smith	1465	1524	1552	--	--
10			1548			
11						
12	Undenise Martin	1573	1580	--	--	--
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1	<u>E X H I B I T S</u>		
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION IN EVIDENCE</u>	
3	GENERAL COUNSEL'S		
4	GC-43	1389	1390
5	GC-49 (d)	1377	1377 - Withdrawn
6	GC-63	1386	1388
7	GC-77 (appended)	--	1330
8	GC-80	1462	1463
9	GC-81	1424	1425
10	GC-82	1425	1426
11	GC-83	1435	1447
12	RESPONDENT'S		
13	R-22	1451	1452
14	R-23	1515	1516
15	R-24	1468	1469
16	R-25	1469	1470
17	R-26	1470	1473
18	R-27	1471	1473
19	R-28	1473	1474
20	R-29	1517	1519
21	R-30	1521	1523
22	R-31	1555	1555
23	R-32	1555	1556
24	R-33	1556	1556
25			

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1 JUDGE RINGLER: Now, you said 160 facilities. Is  
2 Memphis an important facility amongst them or is Memphis  
3 kind of just equal amongst the other 160?

4 THE WITNESS: It's just equal as far as I know.

5 JUDGE RINGLER: Okay. So in terms of size and anything  
6 else it's --

7 THE WITNESS: Well, when I say there's 160, there's 160  
8 warehouses.

9 JUDGE RINGLER: Okay.

10 THE WITNESS: So in Memphis there are, I think, four or  
11 five warehouses.

12 JUDGE RINGLER: Okay.

13 THE WITNESS: So they call the Memphis area a campus.  
14 And there are other campuses throughout the United States,  
15 but then there's also areas where there's just one  
16 warehouse.

17 JUDGE RINGLER: So how many campuses that have like four  
18 or five warehouses in one cluster are there?

19 THE WITNESS: I don't know, I just --

20 JUDGE RINGLER: Okay. Can you estimate? Is it more  
21 than 10? Is it more than 25?

22 THE WITNESS: I would guess it's more than 10, but I  
23 really don't know.

24 JUDGE RINGLER: Okay. That's fair.

25 Q. BY MR. HEARNE: So are you saying there's more than 10

1 campuses that are larger than the Memphis operations or just  
2 more than 10 campuses total?

3 A. More than 10 that have multiple warehouses.

4 Q. Multiple warehouses. Is Memphis like in terms of rank,  
5 is Memphis one of the largest facilities you have?

6 A. I really don't know. Like I said, with campuses with  
7 multiple warehouses, I don't know how many people are in  
8 each. I just don't know that.

9 Q. Okay. I don't have any additional questions on that.  
10 So after the 27th, you came to Memphis on June 1st.

11 A. Yes.

12 Q. Okay. And you actually started the investigation on  
13 June 2nd, right?

14 A. My part of it.

15 Q. Your part of it. I mean your involvement, direct  
16 involvement questioning witnesses started on June 2nd,  
17 right?

18 A. Yes.

19 Q. Okay. And you talked with Carolyn Jones that day?

20 A. Yes.

21 Q. And I presume that when you got to Memphis you reviewed  
22 all the witness statements and the various materials that  
23 had been gathered up to that point before you talked to her,  
24 right?

25 A. Yes.

1 **DIRECT EXAMINATION**

2 Q. BY MR. GOODWIN: Mr. Smith, you're the Director of  
3 Operations for OHL in Memphis?

4 A. Yes.

5 Q. Are you responsible for multiple accounts?

6 A. I am.

7 Q. How many accounts are you presently responsible for?

8 A. 17.

9 Q. All right, over what buildings would these accounts be  
10 spread?

11 A. We have the -- I have the 5210 and the 5240 Buildings.  
12 On the Hickory Hill, I have the 5265. Pilot Drive, I have  
13 the BP Building. And then I also have on Global Drive the  
14 Remington Building.

15 Q. And do you frequent all of those buildings on a regular  
16 basis?

17 A. I do.

18 Q. Where is your office?

19 A. In the 5540 Building.

20 Q. Who do you report to?

21 A. Karen White.

22 Q. How long have you worked for OHL?

23 A. Six years.

24 Q. What jobs have you had at OHL?

25 A. I began as an Operations Manager. Was promoted a couple

1 A. Never.

2 Q. Did you hear Mr. Steel make that comment?

3 A. No, I did not.

4 Q. Have you ever used that comment, monkey on a stick?

5 A. I can't even fathom what it would represent.

6 Q. Do you know where that's coming from, where that  
7 accusation is coming from?

8 A. No. Doesn't make any sense to me.

9 Q. All right, let's talk about -- while we're on  
10 Ms. McNeal, let's talk a little bit about --

11 MR. GOODWIN: And, Your Honor, this would go to the R  
12 Case.

13 JUDGE RINGLER: Okay.

14 Q. BY MR. GOODWIN: Rachel Maxi.

15 A. Okay.

16 Q. I think Ms. McNeal testified that she talked to you and  
17 perhaps someone else in management about the position that  
18 Rachel got, correct?

19 A. Yes. We had heard -- I'm not sure who reported it to  
20 me, but it would have been one of the supervisors in  
21 Waterpik, either Alfreda or Randy Phillips had called and  
22 told me that Jill was upset about Rachel getting the  
23 position of the RedPrairie data clerk because it wasn't  
24 posted, and she felt like she should have been given an  
25 opportunity to bid on it. So Karen White and myself went

1 time that you were -- that you thought, felt she was  
2 violating federal law when she was passing out union  
3 literature to workers that were on company time, correct?

4 A. I did.

5 Q. Okay. You testified very briefly about Rachel Maxi,  
6 Mr. Smith. You said that she was -- she works with the  
7 RedPrairie system. Is that correct?

8 A. She doesn't now, but she did.

9 Q. She did. I'm sorry. She did in the time period -- at  
10 the time of the second union election, she was working on  
11 the RedPrairie system, correct?

12 A. Correct.

13 Q. And RedPrairie system is a software program. Is that  
14 correct?

15 A. Correct.

16 Q. It's a very complicated program, correct?

17 A. Not correct.

18 Q. It's not -- you don't think it's a complicated program?

19 A. No, I don't.

20 Q. It is a program that is used -- it has more than one  
21 purpose though, correct?

22 A. I don't know what all of its purposes are. We use it  
23 for the purpose of tracking employees' productivity.

24 Q. That's what Rachel Maxi uses it for; is that correct?

25 A. That's what OHL uses it --

1 Q. I'm sorry. That's one of the -- is that the only  
2 purpose OHL uses it for?

3 A. That's the only purpose that OHL Memphis uses RedPrairie  
4 for.

5 Q. Okay. And what you do with it then is you use it as  
6 sort of an efficiency measure so that you know for example  
7 how many picks a picker is making during the course of an  
8 hour; is that correct?

9 A. Correct.

10 Q. How many shots a blaster is making during the course of  
11 an hour?

12 A. Correct.

13 Q. And all that information is gathered from the radio  
14 frequency guns that the workers use?

15 A. Not all of it.

16 Q. But most of it is.

17 A. A good portion of it. The blasting doesn't come from a  
18 radio frequency gun. It comes from the computer itself.

19 Q. Okay. But in other words, most of -- almost everything  
20 that goes into RedPrairie is gathered electronically. Is  
21 that correct?

22 A. Almost everything.

23 Q. And it is used to, and it is used to measure the  
24 efficiencies of the -- one of the things it's used for is to  
25 measure the efficiency of the workers on the floor. Is that

1 correct?

2 A. Correct.

3 Q. To determine whether they're working up to a particular  
4 standard or not; is that correct?

5 A. Correct.

6 Q. Okay. The -- let me touch real briefly with you,  
7 Mr. Smith, on the issue about people that have keys to the  
8 building. Leads, a lead would have a key to a building in  
9 which the lead worked. Is that correct?

10 A. Yes.

11 Q. The lead would not have a key, would not normally have a  
12 key to a building in which that employee was not a lead,  
13 would he or she?

14 A. Unless that lead had worked in a different building when  
15 their account that they were reporting to was in a different  
16 building, they could potentially still have a key to  
17 multiple buildings.

18 Q. Okay. OHL wouldn't work to make certain that they  
19 maintain the security of those by getting keys from people  
20 that were no longer working on a given account?

21 A. There's nothing insecure with the key log. As long as  
22 we keep them logged and know who has keys to which area,  
23 that doesn't make them insecure.

24 Q. And the same would be true of an inventory control  
25 person. Normally, they would only have keys to the building



		<u>I N D E X</u>				<u>VOIR</u>
		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
3	<u>WITNESSES</u>					
5	Raymond Holt	1604	1608	1611	--	--
7	James Brewer	1613	1618	--	--	--
9	Tia Harris	1623	1635	1642	1646	--
11	Dwayne Luther Nelson	1648	1654	--	--	--
13	Tammy Stewart	1662	1668	1674	1678	--
15	Glorina Kurtycz	1681	1685	--	--	--
17	Brenda Stewart	1693	1695	--	--	--
19	Benjamin Brandon	1704	1715	1716	--	--
21	Dawn Barnhill	1724	1726	1729	--	--
23	Bobby Hill	1731	1738	--	--	--
25	Vania Washington	1739	--	--	--	--
27	James Cousino	1743	1749	--	--	--
29	Jesse William Smith	1755	1761	1764	--	--
31	Kaycee Harden	1765	1769	1770	--	--

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	<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>		
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-1 (aa)	1599	1600
5	UNION'S		
6	U-2	1633	1646
7	U-3	1624	1646
8	U-4	1628	1646
9	U-11	1616	1618
10	U-12	1617	1618
11	U-13 and 13 (a)	1703	1703
12	U-14	1703	1703
13	U-15	1709	1715
14	U-23	1600	1600
15	RESPONDENT'S		
16	R-34	1601	1601
17	R-35	1689	1690
18	R-36	1720	Rejected - 1721
19	R-37	1721	1722
20	R-38	1722	1722
21	R-39	1723	1723
22			
23			
24			
25			

- 1 I was counting per hour.
- 2 Q. And would she tell you whether your work was good or
- 3 bad?
- 4 A. Yes.
- 5 Q. Would she indicate to you whether you needed to increase
- 6 your speed, or whether or not you were doing a good job or a
- 7 bad job?
- 8 A. Yes.
- 9 Q. What would she say?
- 10 A. She said my count production is down and that I just
- 11 need to raise it just a little bit on the average per hour.
- 12 Q. Now, was it your understanding that if you didn't do
- 13 that what would happen to you?
- 14 A. No, I didn't understand that.
- 15 Q. Okay. When, if ever, did you see or where did you
- 16 normally see Ms. Maxey?
- 17 A. In the front office.
- 18 Q. She wasn't on the floor?
- 19 A. No, she didn't have a -- she wasn't on the floor.
- 20 Q. Did you ever see her counting?
- 21 A. No.
- 22 Q. Did you ever see her pulling?
- 23 A. No.
- 24 Q. In the Waterpik area, is there a break room?
- 25 A. Yes.

- 1 JUDGE RINGLER: I'm sorry. You said operations?
- 2 THE WITNESS: Excellence.
- 3 JUDGE RINGLER: Excellence?
- 4 THE WITNESS: Um-hum. Assistant.
- 5 JUDGE RINGLER: Assistant, okay.
- 6 Q. BY MR. CONNOR: When you received this, did you discuss
- 7 with your supervisor why it said administrative assistant on
- 8 there instead of operational excellence assistant?
- 9 A. No.
- 10 Q. Was Vania Washington your supervisor, at that point?
- 11 A. No. Buddy Lowery.
- 12 Q. Buddy Lowery?
- 13 A. Um-hum.
- 14 Q. What was his title?
- 15 A. I think he's the operations excellence champion. He's a
- 16 manager.
- 17 Q. Do you know who he reported to?
- 18 A. No.
- 19 Q. Okay. As an operations excellence assistant, you have
- 20 an office; is that correct?
- 21 A. I don't.
- 22 Q. You don't. Where is your workstation?
- 23 A. It's in the office. I have a desk.
- 24 Q. You have a desk?
- 25 A. Right.

1 Q. And your desk has a computer on it; is that right?

2 A. Yes.

3 Q. You spend most of the time during the day at your desk;  
4 is that right?

5 A. Yes.

6 Q. Would it be fair to say you -- well, let me ask you the  
7 question this way, Ms. Harris. You work an eight-hour  
8 shift; is that correct?

9 A. Yes.

10 Q. What time do you go in to work?

11 A. 7:00 in the morning.

12 Q. And you leave at what time?

13 A. 3:45.

14 Q. Would it be fair to say that during most of that day you  
15 spend it at the desk; is that correct?

16 A. Yes.

17 Q. You do occasionally go out on the floor; is that right?

18 A. Yes.

19 Q. But that's less than an hour each day, right?

20 A. It just depends on what's going on.

21 Q. Well, some days you don't go out on the floor at all,  
22 right?

23 A. Right.

24 Q. In fact, a lot of days you're at your desk the whole  
25 day, right?

1 A. No.

2 Q. Well, you're at your desk most of the day, on many days,  
3 is that fair?

4 A. Yes.

5 **(Union's Exhibit 4 marked for identification.)**

6 Q. BY MR. CONNOR: Okay. And your job is to -- let me show  
7 you, Ms. Harris, what's been marked for identification as  
8 Union's Exhibit 4. And again let me direct your attention  
9 in the bottom right-hand side. There are numbers that go up  
10 to 703 on the bottom right-hand side and ask you if that is  
11 your signature?

12 A. Yes, it is.

13 Q. Okay. Again on the front of this document, Ms. Harris,  
14 on the front of Union Exhibit 4, in the middle it says  
15 employee details; is that correct? I'm sorry, are you still  
16 looking at it?

17 A. Yes.

18 Q. Did you recognize the document?

19 A. Yes.

20 Q. Okay. On Page 699 underneath employee details, do you  
21 see it there?

22 A. Yes.

23 Q. Again it refers, has your name, Tia Harris; is that  
24 correct?

25 A. Yes.

1 Q. And again it refers to you as an administrative  
2 assistant; is that correct?

3 A. Yes.

4 Q. And at this point in time, were you still reporting to  
5 Buddy Lowery; is that correct?

6 A. Yes.

7 Q. And is your understanding that at this point in time you  
8 were still an operations excellence assistant; is that  
9 correct?

10 A. Yes.

11 Q. Now, as an operations excellence assistant, your job in  
12 large part was to work with the Red Prairie system; is that  
13 right?

14 A. Yes.

15 Q. And the Red Prairie system is a labor management system;  
16 is that right?

17 A. Yes.

18 Q. And that's a system that assists in the control of the  
19 warehouse, right?

20 A. Yes.

21 Q. And would it be fair to say that's what you spend most  
22 of your time doing is working on that system; is that right?

23 A. Yes.

24 Q. Okay. And the use of that system is to generate  
25 reports. Is that part of it?

1 A. Yeah.

2 Q. And those reports are used by management to help the  
3 warehouse run efficiently. Is that correct?

4 A. Yes.

5 Q. And the reports that you generate by and large go to  
6 management individuals; is that right?

7 A. Yes.

8 Q. And you help them -- the reports, the information that  
9 you're getting and using assists them in knowing how to  
10 properly staff the warehouse; is that correct?

11 A. The report shows that. I don't.

12 Q. I know you don't. But that's what the report is for; is  
13 that correct?

14 A. Right, yes.

15 Q. And that report, they use the information in the reports  
16 that you are generating to determine the staffing levels in  
17 the warehouse, correct?

18 A. Yes.

19 Q. To determine placement of product in the warehouse; is  
20 that correct?

21 A. I don't know. I'm not sure about that.

22 Q. Okay. They use it, well, I mean basically the system is  
23 to determine how to best layout the warehouse so that it is  
24 as efficient as possible.

25 A. Yes.

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- 1 Q. Is that correct?
- 2 A. Yes.
- 3 Q. And in order to get that information, you gather that
- 4 information from the computer; is that right?
- 5 A. Yes.
- 6 Q. The information that is provided that you're using, the
- 7 raw data that you're providing comes from other computer
- 8 generated information within the warehouse; is that right?
- 9 A. Yes.
- 10 Q. In addition to operating, well, let me ask you the
- 11 question this way, Ms. Harris. Is billing part of the Red
- 12 Prairie system?
- 13 A. No.
- 14 Q. In July of 2010, were you engaged in part in billing, in
- 15 accounts receivable operations --
- 16 A. Yeah.
- 17 Q. -- at OHL?
- 18 A. Yes.
- 19 Q. Okay. Let me finish my question. You were engaged in
- 20 billing operations?
- 21 A. Yes.
- 22 Q. And are you still doing that now?
- 23 A. Yes.
- 24 Q. And part of the reports that you generate or part of
- 25 your function is to make sure that the accounts receivable

- 1 are completed in a timely fashion; is that correct?
- 2 A. The Red Prairie is not defined in billing.
- 3 Q. Well, that's the distinction I'm trying to make,
- 4 Ms. Harris. A large part of your time is spent on the Red
- 5 Prairie system, right?
- 6 A. Yes.
- 7 Q. And that's a management logistics program, correct?
- 8 MR. BODZY: I object to the form of the question.
- 9 JUDGE RINGLER: Overruled. Do you know?
- 10 Q. BY MR. CONNOR: It's a management logistics or a labor
- 11 logistics system; is that correct?
- 12 A. I mean it is labor, yes.
- 13 Q. Okay. And in addition to that, you have billing
- 14 responsibilities?
- 15 A. Yes.
- 16 Q. Including accounts receivable; is that correct?
- 17 A. I bill it. I do the billing for the account.
- 18 Q. And if you do not perform that job correctly, then the
- 19 accounts receivable don't get paid; is that right?
- 20 A. Right. But I --
- 21 Q. I'm sorry. Go ahead.
- 22 A. The managers make sure the billing is correct. I only
- 23 go in the system and invoice it.
- 24 Q. But that is part of your job is to invoice the -- to
- 25 prepare the invoice; is that correct?

- 1 A. Right.
- 2 Q. And if you don't do that then the accounts receivable
- 3 get messed up, right?
- 4 A. Right.
- 5 Q. And so that's an important part of your job, right?
- 6 A. Yes.
- 7 Q. What department are you currently assigned to,
- 8 Ms. Harris?
- 9 A. HP.
- 10 **(Union's Exhibit 2 marked for identification.)**
- 11 Q. BY MR. CONNOR: Ms. Harris, let me show you what's been
- 12 marked as Union Exhibit 2.
- 13 A. Yes.
- 14 Q. Is that your employee review for the period ending
- 15 January 1, 2009?
- 16 A. What did you say?
- 17 Q. 2009. I'm looking at the first page of it. It's Bates
- 18 marked 716. And it says review period ending 1/1/2009.
- 19 A. Oh, yes.
- 20 Q. Would that be correct?
- 21 A. Yes.
- 22 Q. And your job has changed a little bit since 2009; is
- 23 that correct?
- 24 A. Yes, the system has changed.
- 25 Q. I'm sorry?

1 A. The system has changed.

2 Q. The system has changed. It was changed to Red Prairie;  
3 is that correct?

4 A. Right, yes.

5 Q. So would it be fair to say that's a more sophisticated  
6 system than what you had been using?

7 A. Yes.

8 Q. Takes more time to use?

9 A. Yes.

10 Q. It takes a lot more of your time than the old system  
11 did?

12 A. It depends on the day and what's actually going on, on  
13 the floor.

14 Q. This indicates that your -- well, the reviewer at this  
15 time as Vania Washington. Was she your supervisor, at that  
16 point in time?

17 A. Yes.

18 Q. Ms. Harris, where is your work area located?

19 A. In the HP office.

20 Q. Is it in the manager area?

21 A. No, it's not a manager's area.

22 Q. Let me ask you this question, whose desk is closest to  
23 yours?

24 A. Buddy Lowery.

25 Q. Are there any other desks in that area?

1 A. Yes.

2 Q. Who else's desk are in that area?

3 A. Everybody in inventory control.

4 Q. How far is Buddy Lowery's desk from yours?

5 A. We sit side by side.

6 Q. Does anybody sit behind you?

7 A. No.

8 Q. Anybody sit in front of you?

9 A. No.

10 Q. Anybody sit to the other side of you?

11 A. No.

12 Q. And Lowery is your supervisor; is that correct?

13 A. He's my manager.

14 Q. He's your manager, okay.

15 MR. CONNOR: Nothing further.

16 JUDGE RINGLER: Okay.

17

**CROSS-EXAMINATION**

18 Q. BY MR. BODZY: Ms. Harris, I have a few questions for  
19 you. When you became an OEP assistant, were there any  
20 special educational requirements or qualifications you had  
21 to have for that job that were different than any other job?

22 A. No.

23 Q. You talked about Red Prairie. And just so that we have  
24 kind of a complete understanding of what it is that you do  
25 with Red Prairie, tell us what do you do? How do you

- 1 interact with Red Prairie?
- 2 A. I actually go in and I track the productivity from each
- 3 employee on the floor.
- 4 Q. And the software tells you the productivity?
- 5 A. Yes.
- 6 Q. And then you generate reports that show those numbers?
- 7 A. Yes.
- 8 Q. Do you have any discretion to set productivity targets
- 9 for employees?
- 10 A. No.
- 11 Q. Who does that?
- 12 A. That will be a manager.
- 13 Q. And what is it that you are doing in the Red Prairie
- 14 system, itself?
- 15 A. Entering the data from the previous day.
- 16 Q. When you say entering the data, where does the data come
- 17 from?
- 18 A. From employees.
- 19 Q. How does the employee communicate that data to you?
- 20 A. They're in RF guns and they have to scan it, each
- 21 function that they are doing.
- 22 Q. And then the computer collects all those scans?
- 23 A. Yes.
- 24 Q. And is that in the Red Prairie system?
- 25 A. Yes.

1 Q. And then what do you do with that data to then create a  
2 report?

3 A. I have to put all the data in. If they didn't scan into  
4 the actual function, I have to go in and manually do it for  
5 each employee. And to make sure their time actually matches  
6 up to what they actually did that day.

7 Q. To make sure that the time reported and the activities  
8 recorded line up so that the productivity is accurately  
9 reported?

10 A. Right, yes.

11 Q. And then once you make sure that all of that lines up,  
12 you create a report, right?

13 A. Yes. I have to go through the manager to make sure that  
14 they actually did this for a certain amount of hours or  
15 time. I can't make the call.

16 Q. And so once the manager tells you that the data is  
17 correct, you then create a report from the system?

18 A. Yes.

19 Q. And is the report something that you designed,  
20 personally?

21 A. No.

22 Q. Is it something that's in the software system?

23 A. Yes.

24 Q. And you print the report, right?

25 A. Yes.

- 1 Q. What do you do with that report?
- 2 A. I post it on the board in the warehouse.
- 3 Q. Is that the extent of your interaction with the Red
- 4 Prairie system?
- 5 A. Yes.
- 6 Q. You don't use it to manage employees?
- 7 A. No.
- 8 Q. I think Mr. Connor asked you whether it controls the
- 9 warehouse. Do you use Red Prairie to control the warehouse?
- 10 A. I have no control over the warehouse.
- 11 Q. Now, you said that the reports are used to determine the
- 12 staffing levels. Do you determine staffing levels with
- 13 those reports?
- 14 A. No, sir.
- 15 Q. Who determines staffing levels?
- 16 A. Management.
- 17 Q. You talked about your role in billing. Let's just drill
- 18 down on that for a second. What exactly do you do with the
- 19 HP billing?
- 20 A. I go on Accuplus and actually put the week ending and
- 21 the month ending in.
- 22 Q. And Accuplus, is that a computer program?
- 23 A. Yes.
- 24 Q. That creates invoices?
- 25 A. Yes.



1 Q. And you put the specified dates in?

2 A. Yes.

3 Q. And what happens next?

4 A. Once the manager gives -- the manager has to talk to the  
5 customer to approve the invoice. And once the manager gets  
6 it approved, I go in and invoice it. And once I invoice it,  
7 I give the actual invoice to the manager.

8 Q. So does the manager tell you what to input into the  
9 Accuplus system?

10 A. Yes.

11 Q. And you actually input it and generate a physical  
12 invoice, right?

13 A. Yes.

14 Q. And then you give it back to the manager?

15 A. Right. When the manager gives -- he actually gives me a  
16 template of what it should be, but I create the invoice.

17 Q. Now, there was some testimony earlier in the case about  
18 the area where you work. And you were asked about it a  
19 little bit this morning. I think there was some testimony  
20 to the effect that there is a sign on the door that says  
21 authorized personnel only. Do you know what I'm talking  
22 about?

23 A. Yes.

24 Q. Let's talk about who those authorized personnel are. I  
25 think you mentioned the inventory control people work in the

1 same area as you?

2 A. Yes.

3 Q. And how many of those are there?

4 A. Like 10.

5 Q. And are those hourly HP employees --

6 A. Yes.

7 Q. -- that voted in the election or were eligible to vote  
8 in the election, as far as you know?

9 A. Yes.

10 Q. OHL employees. I'm sorry. What did I say?

11 JUDGE RINGLER: I think you might have said HP instead  
12 of OHL.

13 MR. BODZY: Okay. I apologize.

14 Q. BY MR. BODZY: HP account employees who work for OHL.

15 A. Yes.

16 Q. Do the team leads also have access to the area where you  
17 work?

18 A. Yes.

19 Q. And are they also hourly OHL employees that were  
20 eligible to vote in the election?

21 A. Yes.

22 Q. All those, the team leads and the inventory control  
23 people all use the same break room you do?

24 A. Yes.

25 Q. Do you punch a time clock?

1 A. Yes.

2 Q. Where is that time clock?

3 A. It's in HP, on the warehouse floor.

4 Q. Is that the same time clock that the other HP account  
5 employees for OHL use?

6 A. Yes.

7 Q. Now, just so we're clear about your working area, do you  
8 have your own personal office?

9 A. No.

10 Q. Do you have a cubicle?

11 A. No.

12 Q. Just a desk?

13 A. Yes.

14 Q. Do you work out on the warehouse floor like blasting?

15 A. Yes.

16 Q. How often do you do that roughly?

17 A. I may do it once or twice a month. It depends on the  
18 volume on the floor.

19 Q. And how do you know to go out and do blasting?

20 A. A manager asks me.

21 Q. And when you're blasting, what employees are you  
22 blasting with, what position employees?

23 A. All the operator I's or II's on the floor.

24 Q. If the employees were not out on the HP floor scanning  
25 their RF guns, would you have anything to do in the Red

1 Prairie system?

2 A. No.

3 Q. The reports that you post, is that for any employee to  
4 see?

5 A. Yes.

6 Q. So it's not only management that sees your reports,  
7 right?

8 A. No. The managers get an e-mail. But it's the signed  
9 report that I actually post on the wall in the warehouse.

10 Q. And is the purpose of posting it on the wall in the  
11 warehouse for employees to be able to see it?

12 A. Yes.

13 MR. BODZY: That's all the questions I have.

14 **REDIRECT EXAMINATION**

15 Q. BY MR. CONNOR: Ms. Harris, were you eligible to vote in  
16 the first election with the Union?

17 A. No.

18 Q. Now, the information that you get -- that you obtain to  
19 work on the Red Prairie system, that comes from scans that  
20 the other employees make; is that correct?

21 A. Yes.

22 Q. You don't have to go talk to them to find out, to obtain  
23 that information, right?

24 A. I talk to a manager to find out.

25 Q. Okay. And you don't talk to other employees on the

- 1 floor, though, to get that information. It comes there from  
2 the computer, correct?
- 3 A. Right, yes.
- 4 Q. You indicated the Red Prairie system has more than one  
5 report, doesn't it?
- 6 A. Yes.
- 7 Q. It has multiple reports, right?
- 8 A. Yes.
- 9 Q. And you run multiple reports, right?
- 10 A. Yes.
- 11 Q. And some of the reports, in fact most of the reports do  
12 not go to the employees, right?
- 13 A. Right, yes.
- 14 Q. Most of the reports you send to a supervisor or a  
15 manager, correct?
- 16 A. Yes.
- 17 Q. And those are various reports that the Red Prairie  
18 system is capable of generating, right?
- 19 A. Yes.
- 20 Q. And sometimes you even go to meetings to present those  
21 reports, don't you?
- 22 A. No.
- 23 Q. You never go to a meeting to present any reports?
- 24 A. No.
- 25 Q. You never take the report and give it to any of the

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- 1 other supervisors or any of the other operations managers?
- 2 A. I e-mail them the report.
- 3 Q. Okay. And they write to you. Do they e-mail to you and
- 4 on occasion say, Tia, will you send me this type of report.
- 5 And you prepare that report and send to them?
- 6 A. Yes.
- 7 Q. And that's a regular part of your job, right?
- 8 A. Yes.
- 9 Q. Those are communications that you receive -- do you
- 10 receive those communications from Karen White?
- 11 A. I have.
- 12 Q. Phil Smith?
- 13 A. No.
- 14 Q. Vania Washington?
- 15 A. I have.
- 16 Q. You get them from Buddy Lowery?
- 17 A. Yes.
- 18 Q. And who does Buddy Lowery report to?
- 19 A. Karen or Bill or Randall. I'm not sure.
- 20 Q. I'm sorry. Who was the last one?
- 21 A. Randall.
- 22 Q. Randall. Do you ever get requests from Randall for a
- 23 report?
- 24 A. I don't.
- 25 Q. Okay. But you do get requests from other operations

- 1 managers for specific reports, right?
- 2 A. HP managers.
- 3 Q. From other HP managers or other HP supervisors for
- 4 specific reports, right?
- 5 A. Yes.
- 6 Q. And you send them to those people that request it,
- 7 right?
- 8 A. Yes.
- 9 Q. And not the employees, right?
- 10 A. Yes.
- 11 Q. And would it be fair to say that there's more than 15
- 12 or 20 reports that you can generate?
- 13 A. Yes.
- 14 Q. And sometimes when you get a request for a report, you
- 15 have to get the Red Prairie information out and learn how to
- 16 prepare that report, don't you?
- 17 A. Yes.
- 18 Q. And the information that you have on the Red Prairie
- 19 system is pretty extensive, isn't it?
- 20 A. Yes.
- 21 Q. And it takes a lot of time and energy to learn how to
- 22 run those different reports, right?
- 23 A. Yes.
- 24 Q. All those go, and there's only one or two reports that
- 25 actually go to the employees on the floor, correct?

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1 A. Yes.

2 Q. Everything else goes to management, right?

3 A. Yes.

4 MR. CONNOR: Judge, we'd move the introduction of 2, 3,  
5 and 4, Union 2, 3, and 4; other than that, I don't have any  
6 further questions.

7 JUDGE RINGLER: All right. Any objection to 2, 3,  
8 and 4?

9 MR. BODZY: No objection.

10 MR. CONNOR: Judge, I --

11 JUDGE RINGLER: 2, 3, and 4 are admitted.

12 **(Union's Exhibits 2, 3, and 4 received into evidence.)**

13 JUDGE RINGLER: Did you want to comment on something  
14 else?

15 MR. CONNOR: No, I think I'm done, Judge.

16 JUDGE RINGLER: Okay. Anything further, Mr. Bodzy?

17 **RECROSS-EXAMINATION**

18 Q. BY MR. BODZY: Ms. Harris, the reports that you send to  
19 management on a regular basis, not the special requests but  
20 the ones that you send regularly to management, are those  
21 reports, specific reports that you've been told to send to  
22 management?

23 A. Yes.

24 Q. Do you decide which reports should go to management?

25 A. No.



1 JUDGE RINGLER: All right, very good. Counsel, your  
2 witness.

3 MR. CONNOR: Judge, Mr. Nelson is going to be testify  
4 relating to Objections 10, 11, and 15.

5 **DIRECT EXAMINATION**

6 Q. BY MR. CONNOR: Mr. Nelson, my name is Glen Connor. I'm  
7 the attorney for the Steel Workers. You are employed at  
8 OHL; is that correct?

9 A. That is correct.

10 Q. And how long have you been there?

11 A. I've been there a little over two years. I've been  
12 there four or five months as working full-time for a while.

13 Q. Are you temporary?

14 A. Yeah, I was temporary. I'm on full-time now.

15 Q. Okay. When you were a temporary, you were working  
16 through an employment agency; is that right?

17 A. Right. That is correct.

18 Q. And then you were hired by OHL?

19 A. That is correct.

20 Q. And when you got hired by OHL, you became full-time,  
21 correct?

22 A. That's correct.

23 Q. All right. Now, during the time, let me direct your  
24 attention back to the time, were you at the facility when  
25 the Steel Workers had their first election?

1 A. Yes, I was.

2 Q. You were employed at the facility prior to the second  
3 election as well; is that right?

4 A. Yes, I was.

5 Q. Now, I want to ask you some questions about things that  
6 occurred between the first election and the second election.  
7 Did you attend any meetings that were held by the Company  
8 relating to union organizing efforts during that time?

9 A. Yes, I did.

10 Q. Can you tell the Judge to the best of your recollection  
11 when those meetings occurred?

12 A. Well, any time that the Union put out any kind of  
13 pamphlet that had to do with the union recruiting and  
14 anything, they had a meeting. That was almost standard that  
15 if you saw a paper, you were going to have a meeting.

16 Q. Do you have any recollection of any particular meetings  
17 where there was discussion about food stamps?

18 A. This wasn't a union meeting. This was a situation down  
19 on the floor.

20 Q. Would you tell the Judge about it, please?

21 A. Okay. It was a situation down on the floor where an  
22 iPod or some type of instrument was missing.

23 Q. When was this, Mr. Holt [sic]?

24 A. I don't remember the exact date.

25 Q. I mean Mr. Nelson. I'm sorry.

1 A. Yes.

2 Q. When you work overtime, you get overtime pay; is that  
3 correct?

4 A. Yes.

5 Q. Now, when you -- you answered to Mr. Connor that you  
6 were promoted to lead from an operator position. When you  
7 were promoted, did your benefits change?

8 A. No.

9 Q. Who is your supervisor now?

10 A. Jim Steele.

11 Q. Ms. Cheshier has left the Company.

12 A. Yes.

13 Q. What are your duties as the receiving lead? What do you  
14 do?

15 A. I receive all the product that comes into Dukal.

16 Q. Let me lead you a little bit here. They come in by  
17 truck?

18 A. Containers.

19 Q. Oh, containers, that's right. And so you see that they  
20 are properly received and put into the system?

21 A. Yes, sir, unloaded on pallets and I receive it in.

22 Q. So what hours do you work as the receiving lead?

23 A. 10:00 to 6:45.

24 Q. Is there another lead in Dukal?

25 A. Yes.

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- 1 Q. Who is that?
- 2 A. Chris Metters.
- 3 Q. Chris Metters?
- 4 A. Um-hum.
- 5 Q. Does Mr. Metters come in earlier than you do?
- 6 A. He comes in at 8:00.
- 7 Q. Now, what else do you do besides receiving the
- 8 shipments?
- 9 A. I pick, blast.
- 10 Q. And by pick, you mean you go out in the warehouse and
- 11 take the things off the shelf?
- 12 A. Pick the product.
- 13 Q. And you mentioned blast. What is blasting?
- 14 A. Processing the product.
- 15 Q. Is that the work that operators do?
- 16 A. Yes.
- 17 Q. Same type of work?
- 18 A. Yes.
- 19 Q. Is the work that you do?
- 20 A. Yes.
- 21 Q. Do you close orders?
- 22 A. Yes.
- 23 Q. What does that mean?
- 24 A. See that they leave the wave screen for the day.
- 25 Q. Now, the wave screen is something that comes from the

- 1 Q. Does he direct or assign anything to you?
- 2 A. No.
- 3 Q. It sounds like you've been at OHL since almost eight
- 4 years. Have you observed the work that other leads do?
- 5 A. Um-hum.
- 6 Q. Is your job any different than the other leads that
- 7 you've observed at OHL?
- 8 A. No.
- 9 Q. I think employees have to fill out activity cards or
- 10 something on what they do all day.
- 11 A. Um-hum.
- 12 Q. Is that correct?
- 13 A. Yes.
- 14 Q. Do you do that like the other hourly employees?
- 15 A. Yes, sir.
- 16 Q. Do you have a desk that you can use?
- 17 A. Yes.
- 18 Q. Where is it located?
- 19 A. In the middle of the floor.
- 20 Q. So you don't have a separate office or cubicle?
- 21 A. No, sir.
- 22 Q. Do you use the employee break rooms for your breaks and
- 23 your lunch?
- 24 A. Yes.
- 25 Q. Do you have any keys to any of the buildings?

1 A. Yes.

2 Q. Which buildings do you have a key to?

3 A. 5540.

4 Q. Is that because you sometimes lock up?

5 A. Yes. I am usually the last one to leave.

6 Q. That's right because you leave at 6:45.

7 A. Um-hum.

8 Q. Okay. Do you know who the lead was before you were the  
9 lead in Dukal?

10 A. Byron. I can't recall his last name.

11 Q. Did you see what Byron's duties were?

12 A. Yes.

13 Q. Are your duties any different than what Byron was doing?

14 A. No.

15 Q. That's all I have Ms. Stewart. Thank you, ma'am.

16 MR. CONNOR: Nothing further.

17 JUDGE RINGLER: Ma'am, thank you.

18 THE WITNESS: Thank you.

19 **(Witness excused.)**

20 **JUDGE RINGLER: We will go off the record for a moment.**

21 **(Off the record from 10:52 a.m. to 11:26 a.m.)**

22 **JUDGE RINGLER: We are back on the record.**

23 While we were off, we had an opportunity to take a look  
24 at three of the ballots, the three ballots that one was  
25 voided because it had a signature on the ballot, one was

1 on the organizing efforts of the Steel Workers at OHL  
2 beginning with the, very briefly, about the time leading up  
3 to the first election?

4 A. Okay. As far as what we initially went after to  
5 organize?

6 Q. Yes.

7 A. Initial organizing efforts --

8 Q. You need to speak up so that everybody can hear you.

9 A. We initially went after all full-time employees at OHL  
10 after we did some extensive investigation during our  
11 organizing drive and so forth to gather the information and  
12 so forth as to what would make up the unit there. It was  
13 determined that when we filed the petition that we would  
14 file a petition based on the fact of all full-time  
15 employees.

16 Q. Let me show you, Mr. Brandon, what's been marked as  
17 Exhibit 13, Union's Exhibit 13. Do you recognize that as  
18 being the stipulated election agreement?

19 A. Yes.

20 Q. And that was the stipulated election agreement for the  
21 second election at the facility; is that correct?

22 A. That's correct.

23 Q. Now, if you would direct your attention to the  
24 definition of unit in Paragraph 14, do you recognize that?

25 A. Yes.

1 Q. Okay. And is that the same unit that was originally  
2 petitioned for by the Union prior to the first election?

3 A. Yes.

4 Q. Were there any changes at all in the definition of that  
5 unit?

6 A. No changes, no.

7 Q. Would you describe to the Judge how it was that it was  
8 determined that you would petition for that particular unit  
9 in the second election?

10 A. Well, what we petitioned for, like I said, based on the  
11 information that we had from the previous election that we  
12 had held there. And one reason why we went after the full-  
13 time employees was because we knew that OHL at one point had  
14 an onsite temporary service there where they were employing  
15 seasonal workers, really temp workers, and we knew they  
16 would be excluded from the unit. So our goal was to get all  
17 full-time workers.

18 Q. So it was a conscious decision to include full-time  
19 workers; is that correct?

20 A. That's correct.

21 Q. What about other definitions within the unit, were there  
22 discussions about who would be included and who would not be  
23 included in the unit?

24 A. Doing the stip?

25 Q. Yes.



1 A. Yes. And of course that was in the side agreement was  
2 the administrative assistants. We knew that they, after  
3 doing an investigation and talking to a lot of workers who  
4 works there, it was we found out evidence that the  
5 administrative assistants were more closely aligned with  
6 the --

7 MR. BODZY: Your Honor, I'm sorry. Can I interpose an  
8 objection here?

9 JUDGE RINGLER: Sure.

10 MR. BODZY: He's saying what he found out from  
11 employees. There have been employees that have testified in  
12 this proceeding. But to say what he found out from  
13 unidentified employees would be hearsay.

14 JUDGE RINGLER: Sustained. I'll sustain the objection.

15 Q. BY MR. CONNOR: What was the reason that the  
16 administrative assistants were excluded from the unit,  
17 Mr. Brandon?

18 A. We felt like they didn't have a community of interest,  
19 for one thing. That is why they was excluded.

20 Q. In the first petition or during the first election --  
21 you were involved in the first election; is that correct?

22 A. That's correct.

23 Q. How were the administrative assistants treated in the  
24 first election?

25 A. They weren't allowed to vote in the first election.

1 Q. Got it. You were active in the organizing efforts by  
2 the Steel Workers?

3 A. Yes.

4 Q. Before the first election and the second election?

5 A. Yeah.

6 Q. Were you ever contacted by any of the administrative  
7 assistants regarding being included in the unit?

8 A. Oh, no.

9 Q. Were you ever contacted by any suggestion they should be  
10 excluded?

11 A. No.

12 Q. What if any investigation did you do or did you conduct  
13 an investigation to determine what their community of  
14 interest would be? Let me rephrase that. Did you conduct  
15 an investigation regarding the administrative assistants to  
16 determine whether they had a community of interest with the  
17 other people that were petitioned for in the bargaining  
18 unit?

19 A. Yeah. Most organizers during any campaign, you want to  
20 make sure first there is a community of interest they have  
21 regardless of what classification that you're going after.  
22 If there are different types of job classifications and so  
23 forth and different type of titles, we want to make sure  
24 that they do have a community of interest and that they  
25 should be -- when you file the petition, you want to make

1 sure that they should be in or out of the unit. And after  
2 doing an investigation and like I said, getting the  
3 information in on the administrative assistant, it was  
4 determined then that they was a classification or group that  
5 should be excluded from the unit.

6 Q. Now, Mr. Brandon, you were present on the day of the  
7 election; is that correct?

8 A. That's correct.

9 Q. Was there an agreement that related to how the election  
10 would be conducted?

11 A. Yes.

12 **(Union's Exhibit 15 marked for identification.)**

13 Q. BY MR. CONNOR: Let me show you what's been marked for  
14 identification as Union Exhibit 15. Do you recognize that  
15 document?

16 A. Yes, I do.

17 Q. What is that?

18 A. This is an agreement that we had, the stip that we had  
19 pertaining to how the election would run and so forth far as  
20 releasing the employees, and hours and times, and  
21 everything.

22 Q. Now, you need to speak up so I can hear you,  
23 Mr. Brandon.

24 A. Okay.

25 Q. When you say release employees, what are you referring

1 JUDGE RINGLER: Okay.

2 MR. BODZY: Respondent calls Dawn Barnhill. I'll go get  
3 her.

4 JUDGE RINGLER: All right. Hello, please have a seat  
5 right here. If you can put your cell phone on vibrate or  
6 mute, or whatever? Thank you very much. Ma'am, if you  
7 would spell your name for us, first and last?

8 THE WITNESS: Dawn, D-a-w-n, Barnhill, B-a-r-n-h-i-l-l.

9 JUDGE RINGLER: Very good. Raise your right hand.  
10 (Whereupon,

11 **DAWN BARNHILL**

12 was called as a witness by and on behalf of the Respondent  
13 and, after having been duly sworn, was examined and  
14 testified as follows:)

15 **DIRECT EXAMINATION**

16 Q. BY MR. BODZY: Ms. Barnhill, you work in the HP account  
17 at OHL?

18 A. Yes, sir.

19 Q. And did you work in that account in July of this year?

20 A. Yes, sir.

21 Q. In July of this year, did Keith Hughes also work in that  
22 account?

23 A. Yes, sir.

24 JUDGE RINGLER: Mr. Bodzy, which objections and/or  
25 challenges does her testimony relate to?

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1 MR. BODZY: This goes to 7, 10, and 11.

2 JUDGE RINGLER: Of the --

3 MR. BODZY: Of the objections. Sorry, Your Honor.

4 JUDGE RINGLER: Of the Union's or yours?

5 MR. BODZY: OHL's.

6 JUDGE RINGLER: OHL's, okay. So 7, 10, and 11, OHL  
7 objections, okay.

8 MR. BODZY: Right.

9 Q. BY MR. BODZY: Now, prior to the election in July of  
10 this year, did you have an interaction with Keith Hughes  
11 that you reported to OHL?

12 A. Yes, sir.

13 Q. Please tell us first of all do you remember how long  
14 before the election it was?

15 A. Not exactly, maybe a couple of weeks. I'm not exactly  
16 sure.

17 Q. Was it within a month of the election?

18 A. Yes, sir.

19 Q. And where was your interaction with Keith Hughes?

20 A. It was up front by -- I was on the blast station and he  
21 was on the line of the truck.

22 Q. Is that an HP account?

23 A. Yes, sir.

24 Q. And please tell us did you approach Mr. Hughes or did he  
25 approach you?

1 A. He approached me.

2 Q. And what did he say to you?

3 A. I was walking by. And I had this shirt on, and this  
4 shirt says no means no, I can speak for myself. And he said  
5 I'll rip that shirt off you. And I said why would you do  
6 that? And he said why would you purchase that shirt? I  
7 said I wanted this shirt and I got this shirt. And he said  
8 I'll rip that shirt off of you. So once he said that, I  
9 went to my supervisor and told my supervisor what happened.

10 Q. Did you take Mr. Hughes seriously?

11 A. Very.

12 Q. Did you understand him to be threatening you?

13 A. I took it as a threat.

14 Q. Were there any other employees around when he did this?

15 A. No, sir.

16 MR. BODZY: That's all the questions I have.

17 **CROSS-EXAMINATION**

18 Q. BY MR. CONNOR: Ms. Barnhill, where did you obtain the  
19 shirt from?

20 A. I obtained the shirt from an associate from another  
21 account.

22 Q. Was the associate a supervisor?

23 A. No, sir.

24 Q. Did you ever see any supervisor with the no means no  
25 shirt?

1 A. No, sir.

2 Q. What color was it, bright yellow, bright red?

3 A. No, they were navy blue like my hoodie, navy blue on  
4 white.

5 Q. Now, when Mr. Hughes talked to you, you were at the  
6 blasting station; is that correct?

7 A. No. I was going to my work area. In order for me to go  
8 to my work area, I've got to walk in front of him. The line  
9 is right here and my blast station is right here, so I've  
10 got to come around.

11 Q. I'm sorry I really don't understand very well. You were  
12 walking to your blast station?

13 A. I was walking to my work area. And in order for me to  
14 get to my work area, I have to pass him to get to my work  
15 area.

16 Q. What was he doing?

17 A. He was loading the truck.

18 Q. So he was in his work --

19 A. He was in his work area.

20 Q. He was doing his work; is that right?

21 A. Yes, sir.

22 Q. So he was within his job description where he was,  
23 right?

24 A. Yes, sir.

25 Q. And in order to get to your workstation, it just

- 1 happened that you had to go by; is that right?
- 2 A. I had to walk right in front of him.
- 3 Q. So when you walked by him and he started to talk to you,
- 4 you stopped?
- 5 A. Uh-huh.
- 6 Q. And you had a conversation with him; is that right?
- 7 A. Yes, sir.
- 8 Q. Did he say anything -- you said that he approached you.
- 9 In fact, he was at his work area when you started to go by,
- 10 right?
- 11 A. Yeah, but he wasn't catching any boxes. There wasn't no
- 12 boxes coming down the line. He was in his workstation, but
- 13 he wasn't working.
- 14 Q. All right. But he was within a couple of feet of where
- 15 he was --
- 16 A. Yes.
- 17 Q. Needed to be in order to catch boxes that came down the
- 18 line, correct?
- 19 A. I guess.
- 20 Q. You stopped to talk to him?
- 21 A. Yes, sir.
- 22 Q. Was there any more conversation other than the
- 23 conversation about the shirt?
- 24 A. No, sir.
- 25 Q. There wasn't anybody present; is that right?



1 A. No, sir.

2 Q. Who was the name of the supervisor that you reported  
3 this to?

4 A. I had went and told Jim Cuzzo (ph.) and David Mathis  
5 (ph.).

6 Q. And to your knowledge, do you know whether they went and  
7 talked to Mr. Hughes about it?

8 A. I don't know. They just made me write a statement.

9 Q. Did you write the statement down?

10 A. I did.

11 Q. And did you date the statement?

12 A. Sure did.

13 Q. Do you know whether any disciplinary action was taken  
14 against Mr. Hughes?

15 A. Don't know.

16 Q. Did you ever see Mr. Hughes or did you ever talk to  
17 Mr. Hughes again after that about this?

18 A. No, sir.

19 MR. CONNOR: I don't have any further questions, Judge.

20 JUDGE RINGLER: Mr. Bodzy?

21 **REDIRECT EXAMINATION**

22 Q. BY MR. BODZY: When you walked by Mr. Hughes, did he  
23 talk to you first or did you talk to him first?

24 A. He approached me.

25 Q. So he was the first one who said something?

1 A. Who said something.

2 MR. BODZY: That's all the questions I have.

3 JUDGE RINGLER: Mr. Hughes, did you consider him to hold  
4 a particular position with the Union? Was he on their  
5 organizing committee?

6 THE WITNESS: I don't know.

7 JUDGE RINGLER: You're not aware.

8 THE WITNESS: I don't know.

9 JUDGE RINGLER: You just knew what his sentiments  
10 were --

11 THE WITNESS: Yeah.

12 JUDGE RINGLER: -- regarding your shirt.

13 THE WITNESS: Yeah.

14 JUDGE RINGLER: Okay. I think I understand. Do you  
15 have --

16 MR. CONNOR: No follow-up.

17 JUDGE RINGLER: Okay. Good, thanks, ma'am.

18 THE WITNESS: Thank you.

19 **(Witness excused.)**

20 JUDGE RINGLER: Off the record.

21 **(Off the record from 1:20 p.m. to 1:20 p.m.)**

22 JUDGE RINGLER: We are back on the record.

23 And Mr. Bodzy or Mr. Goodwin this time?

24 MR. GOODWIN: I'll be calling Mr. Bobby Hill.

25 JUDGE RINGLER: Mr. Bobby Hill. And, sir, if you would,

1 please spell your name for us, first and last.

2 MR. HILL: B-o-b-b-y H-i-l-l.

3 JUDGE RINGLER: Raise your right hand.

4 (Whereupon,

5 **BOBBY HILL**

6 was called as a witness by and on behalf of the Respondent  
7 and, after having been duly sworn, was examined and  
8 testified as follows:)

9 **DIRECT EXAMINATION**

10 Q. BY MR. GOODWIN: Mr. Hill, good afternoon.

11 A. Good afternoon.

12 Q. Are you employed by OHL here in Memphis?

13 A. Yes, sir.

14 JUDGE RINGLER: Hang on just one moment. Mr. Hill's  
15 testimony goes to?

16 MR. GOODWIN: Company Objection 4 and 9.

17 JUDGE RINGLER: Okay. Thank you, sir.

18 Q. BY MR. GOODWIN: Mr. Hill, you're employed by OHL in  
19 Memphis?

20 A. Yes, sir.

21 Q. And what is your position?

22 A. Operator II.

23 Q. So you are an hourly employee, right?

24 A. Yes, sir.

25 Q. There was a union election in July of this year. Did

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1 you serve as an observer to that election?

2 A. Yes, sir.

3 Q. And were you an observer selected by the Union or by the  
4 Company?

5 A. By OHL.

6 Q. I'm sorry?

7 A. By OHL.

8 Q. By OHL, all right. And did you wear a badge as an  
9 observer?

10 A. Yeah, I believe so, yes.

11 Q. Now, what was your job as observer? What did you do  
12 that day as observer?

13 A. To let the employees know when it was their time to  
14 vote.

15 Q. So you went out to get the -- to announce to the  
16 employees it was time to vote?

17 A. Yes, sir.

18 Q. Was there an observer appointed by the Union going with  
19 you?

20 A. Yes.

21 Q. Was that an employee from the HP account?

22 A. Yes, sir.

23 Q. Do you know his name?

24 A. No, I do not.

25 Q. Does Nelson sound familiar?

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1 A. Well, I don't know too many of the employees over there.

2 I just know a few of them.

3 Q. But you know he was the union observer?

4 A. Yes, sir.

5 Q. When you were out getting employees, did you see him,  
6 the union observer, did you see him interact with any of the  
7 employees?

8 A. With one when we had the break and everybody came back  
9 for the second part of the voting, there was a guy waiting  
10 to vote. But they told him he couldn't vote yet because  
11 they was on a break.

12 Q. Let me stop you there. There were breaks during the day  
13 of the voting?

14 A. Yes.

15 Q. So this was after a break?

16 A. Yes, after the lunch break.

17 Q. You and the gentleman from -- the union observer were  
18 where?

19 A. Well, they had just brought him in. At first it was me  
20 and another lady. Then she left. Then they brought in  
21 another observer. So after the break, we was headed across  
22 the street to get the employees from Fiskars. So the  
23 employee waiting outside to vote, so when they let him come  
24 in to vote, as he was leaving, he came out and was talking  
25 to the other guy and was like, man, you know what I did, it

1 didn't take me but 15 seconds to know how I vote. He was  
2 like, yeah, yeah, you did right, you did the right thing.

3 They gave each other five and they kept on talking. And I  
4 proceeded across the street.

5 Q. Okay, let's back up a little bit. The election was in  
6 the 5540 building, correct?

7 A. Yes, sir.

8 Q. And where is the Fiskars account?

9 A. 5510.

10 Q. Where did you see this conversation take place between  
11 the person waiting to vote and the union observer?

12 MR. CONNOR: Object to --

13 JUDGE RINGLER: Sustained.

14 Q. BY MR. GOODWIN: Where did you see the high fiving going  
15 on?

16 A. Out in the parking lot as the guy was leaving out of the  
17 building, voting.

18 Q. And what conversation did you hear between this man, the  
19 voter, and the union observer?

20 A. Well, the voter, he came out and said, well, you know  
21 what I did, it didn't take me 15 seconds.

22 Q. And he was addressing -- who was he talking to?

23 A. He was talking to the union observer.

24 JUDGE RINGLER: So he had already voted, at that point?

25 THE WITNESS: Yes. He had came earlier, but we had told

1 him they was going to lunch. So I told him that when they  
2 come back from lunch, he'll be able to vote. So the union  
3 people and OHL people came back, so the guy that was over  
4 there voting, he told them to leave out so he got to vote.  
5 Then he instructed us to go get the other employees from  
6 across the street so they could come over and vote. As we  
7 was coming down the steps, he came out right behind us and  
8 started talking to the guy, and told him it didn't take me  
9 15 seconds, blah, blah, blah. They gave each other a high  
10 five, and he talked some more, and we walked on across the  
11 street.

12 Q. BY MR. GOODWIN: You say he talked some more. Could you  
13 hear that conversation?

14 A. Yeah, they were just saying back and forth that how he  
15 voted. He was like, yeah, you did the right thing.

16 Q. Who said, hey, you did the right thing?

17 A. The union observer.

18 Q. And this was coming down the steps out of 5540?

19 A. Well, we was like in the parking lot headed across the  
20 street.

21 JUDGE RINGLER: Now, did this conversation take place in  
22 front of anyone who hadn't yet voted, who was going to be  
23 voting?

24 THE WITNESS: Well, no, there was some people outside on  
25 break from our account, but they couldn't hear us. It was

1 just me, him, and the other guy. And then when they started  
2 talking, I was like maybe a few feet in front of them. So I  
3 turned around and they was talking. And I was hearing what  
4 they were saying. And they was talking rather loud anyway,  
5 so, and then the guy he walked on up the parking lot, out  
6 the gate. So I guess he was off that day because he had on  
7 like regular street clothes.

8 Q. BY MR. GOODWIN: The union observer or the voter had on  
9 street clothes?

10 A. The voter.

11 Q. The voter, okay. The day of the election, did you  
12 attend a meeting where somebody gave instructions for the  
13 observers?

14 A. The guy that was on the election, he was telling us we  
15 were going to be the observers. They wanted us to go out in  
16 the building and let people know when it was time to vote,  
17 where to come to, to vote, do not talk to anyone, just give  
18 them instructions on where to come, and then come back  
19 inside of the break room, sit down, and let everybody come  
20 in and vote.

21 Q. So the observers were told -- the person giving this  
22 instruction, is this the Board agent?

23 A. Yes, the Board agent.

24 Q. And he had instructed the observers not to talk to any  
25 of the voters?



1 JUDGE RINGLER: Do you want to spell your last name,  
2 too, even though I think I probably have it, just to be on  
3 the safe side.

4 MS. WASHINGTON: W-a-s-h-i-n-g-t-o-n.

5 JUDGE RINGLER: Very good. Can you raise your right  
6 hand?

7 (Whereupon,

8 **VANIA WASHINGTON**

9 was called as a witness by and on behalf of the Respondent  
10 and, after having been duly sworn, was examined and  
11 testified as follows:)

12 JUDGE RINGLER: All right, go ahead.

13 **DIRECT EXAMINATION**

14 Q. BY MR. GOODWIN: Ms. Washington, are you employed by  
15 OHL?

16 A. Yes.

17 Q. What is your position?

18 A. Operations manager for the McLean account.

19 Q. Do you know an employee at OHL, hourly employee named  
20 Keith Hughes?

21 A. Yes, I do.

22 Q. In the days leading up to the election, did you hear  
23 Keith Hughes make any statements where he was quoting  
24 Mr. Randall Coleman?

25 A. Yes, I did.

1 Q. About how long before the election did you hear this?

2 A. About a week, just about a week.

3 Q. About a week before, okay. And where were you and where  
4 was Mr. Hughes?

5 A. I was coming out of the in-plant office. That's the  
6 supervisor's office right on the floor. And Keith was at  
7 his station. He was at the end of the line, on the dock.

8 Q. He loads trucks?

9 A. Yes.

10 Q. And what did you hear him say?

11 A. He was calling to Michael Guy.

12 Q. Who is Michael Guy?

13 A. Michael Guy is a picker/replenisher for the HP account.  
14 Michael was exiting the building. He was going through the  
15 security cage.

16 Q. You say he was addressing Mr. Guy.

17 A. Yes.

18 Q. Was it loud enough for you to hear?

19 A. Yes.

20 Q. How close to Mr. Hughes were you when you heard his  
21 comments?

22 A. About 10 feet.

23 Q. What did you hear Mr. Hughes say?

24 A. He asked if he had heard what Randall said during the  
25 meeting. And I don't know if Michael heard him, but he

1 stopped and looked his way. He said --

2 Q. I'm sorry. Michael stopped and looked toward  
3 Mr. Hughes?

4 A. Yes. He was going through the security cage, which is  
5 about 5 to 10 feet behind me. And when he called to  
6 Michael, I stopped and looked around. He said did you hear  
7 what Randall said. He called us some waba stubs (ph.) and  
8 killers, I think it was.

9 Q. Did Michael have any reaction to that?

10 A. He smiled and kept walking.

11 Q. What was the level of Mr. Hughes' voice? Was it soft,  
12 loud, in the middle? How would you describe it?

13 A. It was elevated, but it wasn't really, really loud. It  
14 was elevated.

15 Q. Do you think he saw you?

16 A. Yes. I was in his direct, yes.

17 Q. When you heard this comment, did you take it as any kind  
18 of a racial comment?

19 A. No.

20 Q. Are you African-American? I need to say that for the  
21 record.

22 A. Yes, I am.

23 Q. And is Mr. Gay --

24 A. Guy.

25 Q. Guy?

1 MR. GOODWIN: This is Mr. Jim Cousino.

2 JUDGE RINGLER: Sir, can you spell your name for us,  
3 first and last, please?

4 MR. COUSINO: First name Jim, J-i-m. Last name  
5 C-o-u-s-i-n-o. Proper name is James.

6 JUDGE RINGLER: Thank you, sir. If you would, please  
7 raise your right hand.

8 (Whereupon,

9 **JAMES COUSINO**

10 was called as a witness by and on behalf of the Respondent  
11 and, after having been duly sworn, was examined and  
12 testified as follows:)

13 MR. GOODWIN: Your Honor, Mr. Cousino's testimony will  
14 go to Company Objections 1 and 2, 7, 10, and 11.

15 JUDGE RINGLER: All right, 1, 2, 7, 10, and 11. Okay,  
16 thank you, sir.

17 MR. GOODWIN: Let me see if that's all I've got. And  
18 also to some extent to Union Objections 9 and 11.

19 JUDGE RINGLER: Okay.

20 **DIRECT EXAMINATION**

21 Q. BY MR. GOODWIN: Mr. Cousino, you are employed by OHL?

22 A. Yes.

23 Q. And what's your position?

24 A. Operations manager.

25 Q. Was that your position in July?

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1 A. Yes, it was.

2 Q. Now, prior to the second election and my questions will  
3 be directed around the second election back in July.

4 A. Okay.

5 Q. Prior to that election, did you attend a communications  
6 meeting where Randall Coleman was addressing the hourly  
7 employees?

8 A. Yes.

9 Q. Do you recall what he said at this particular  
10 communications meeting?

11 A. This particular one, it was read from a newspaper  
12 article.

13 Q. This is Mr. Coleman reading from the newspaper?

14 A. Yeah, Randall Coleman reading directly from a newspaper  
15 article. I'm not sure what paper it was published from, but  
16 it was a newspaper article that related to some I guess  
17 you'd call it violence activity around some labor disputes  
18 at a company somewhere down in Mississippi.

19 Q. It was not at OHL?

20 A. No, it was not.

21 Q. Were there other things discussed at this meeting or was  
22 this just about that?

23 A. I believe so. I couldn't tell you what they, you know,  
24 the communication meeting would have probably spurred  
25 another subject. I don't remember what that was at this

1 Q. Did Mr. Hughes seem to be addressing any -- excuse me,  
2 where did you hear Mr. Hughes say this?

3 A. He was on the shipping dock, loading in the truck  
4 loading area. I was probably maybe 15 yards away from where  
5 the in-plant office is on the floor. That was in close  
6 proximity to that area.

7 Q. Did he seem to be directing his comments about  
8 Mr. Coleman to anybody in particular?

9 A. No. It appeared to be whoever would listen. He was  
10 loud and agitated during that time.

11 Q. Were there hourly employees around at the time?

12 A. Yes.

13 Q. Did you talk to him about his comment?

14 A. I sure did. First, I asked him to calm down; this is  
15 not the place or the time to have that conversation in the  
16 middle of the workday.

17 Q. This was working time?

18 A. Yes, it sure was. It was indirect working time. And I  
19 asked him first to calm down, that we didn't need to have  
20 that type of disturbance going on in the warehouse. And I  
21 also told him that the comments he was making were not  
22 anything that I've heard so I'm not sure why he would be  
23 making those comments. And I also invited him that if he  
24 wanted to discuss it further, I'd be happy to set up a  
25 meeting with him and Mr. Coleman to discuss that, the

1 allegations.

2 Q. The allegations about what in particular?

3 A. About Keith saying that Randall had no right calling or  
4 telling employees those terms.

5 Q. And you had not heard Mr. Coleman call OHL employees --

6 A. No, he did not.

7 Q. Okay. Did Mr. Hughes ask you to set up a meeting with  
8 Mr. Coleman?

9 A. No, he did not. Right after that, it diffused the  
10 situation.

11 Q. I'm sorry?

12 A. The situation was diffused after I proposed that.

13 Q. Let me switch to another subject. Dawn Barnhill, do you  
14 know her?

15 A. Yes, I do.

16 Q. Did she work under your supervision at one time?

17 A. Yes.

18 Q. Was she under your supervision around the time of the  
19 election?

20 A. Yes.

21 Q. Just prior to the election, did she complain to you  
22 about something Keith Hughes had said to her?

23 A. Yes, she did.

24 Q. What did she say that Keith Hughes had said to her?

25 MR. CONNOR: Object to hearsay, Judge.

1 A. I do not.

2 Q. Do you remember what it said about violence?

3 A. Referred to at one point there was people speaking  
4 through megaphones at non-union supporting -- there was  
5 report of a shot, a gun being fired through somebody's  
6 house. And then comments made about activities leading to  
7 gangbang, thugs, and killers. I do remember that  
8 specifically from the article.

9 Q. Was there a union mentioned in the article?

10 A. I believe there did relate to a USW dispute.

11 Q. When you say USW, you're talking about the Steel  
12 Workers?

13 A. Correct.

14 Q. And that article referred to thugs, gangbangers, and  
15 killers; is that right?

16 A. Yes, that article did.

17 Q. It associated the Steel Workers with thugs, gangbangers,  
18 and killers; is that correct?

19 A. I don't recall the correlation.

20 Q. Do you think that it was read to suggest that OHL was  
21 thugs, gangbangers, and killers?

22 A. Not at all, not at all.

23 Q. So the correlation would have been between the Union and  
24 the misbehavior that was alleged, that may or may not have  
25 been going on down in Amery; is that right?



1 A. I don't know the intent of who wrote the article on what  
2 the intent was. I just remember some of the verbiage from  
3 that.

4 Q. But the intent of the person that read it was to  
5 associate the Steel Workers with thugs, gangbangers, and  
6 killers, wasn't it?

7 MR. GOODWIN: Objection to the intent of the reader,  
8 Your Honor.

9 JUDGE RINGLER: Overruled. You can answer it, if you've  
10 thought about it.

11 THE WITNESS: I don't know the intent of the person  
12 reading the article.

13 Q. BY MR. CONNOR: The person reading the article was  
14 Mr. Coleman, right? And you didn't give any thought to why  
15 he might have been bringing that to the attention of the  
16 employees there at OHL; is that right?

17 A. Like I said, I'm not sure of his intent. I didn't  
18 confer with him before that time.

19 Q. Well, do you think it would be reasonable for a person  
20 that heard that in the midst of the dispute that was going  
21 on with OHL that Mr. Coleman reads an article about the  
22 Steel Workers in a newspaper article that associates the  
23 Steel Workers with thugs, gangbangers, and killers, do you  
24 think it would be reasonable for another worker maybe that  
25 did not like the Steel Workers to associate the two?

1 A. No. From my standpoint, I wouldn't correlate that or I  
2 wouldn't make a direct parallel to that, no.

3 Q. So then the point in Mr. Coleman reading it was just to  
4 read it?

5 A. Informative.

6 Q. Informative, Mr. Cousino, about Steel Workers and thugs,  
7 gangbangers, and killers, correct?

8 A. I wouldn't comment on that, no.

9 Q. Now, you said it was the next day that you heard  
10 Mr. Hughes making these comments; is that right?

11 A. Yes, correct.

12 Q. And you were about 15 yards from him; is that right?

13 A. Approximately, yes.

14 Q. And you said that he was agitated; is that right?

15 A. Yep.

16 Q. Now, how long had you been watching him when you heard  
17 him start to make these noises, to say what he said?

18 A. Obviously, less than a minute. I mean it was in close  
19 proximity to the area I was in at that time.

20 Q. And your attention was directed to it because of what  
21 you heard; is that correct?

22 A. Because of seeing him in an agitated state. He had his  
23 arms moving and flinging. And I came over closer and heard  
24 the direct comments that he was making.

25 Q. Was there anybody closer to him than you?

1 A. Senior CSR.

2 Q. CSR, customer service representative?

3 A. Yes, sir.

4 Q. And as the senior CSR, do you have any role in tracking  
5 productivity of employees?

6 A. Yes, sir.

7 Q. Can you explain what you do to track productivity?

8 A. I did data entry for the OEP program, operational  
9 excellence.

10 JUDGE RINGLER: Counsel, objections, challenges?

11 THE WITNESS: Challenges. This relates to the Tia  
12 Harris and Rachel Maxey challenge.

13 JUDGE RINGLER: All right.

14 Q. BY MR. BODZY: You said you do data entry for the OEP  
15 program, right?

16 A. Yes, sir.

17 Q. OEP is Operations Excellence Program?

18 A. Yes, sir.

19 Q. What specifically do you do? Describe it for us how you  
20 do your job and track the productivity.

21 A. I just get cards from the employees. They fill them out  
22 by themselves. Some of the information is systematic. Some  
23 of it is manual. But I fill out basically whatever is on  
24 the card, just put them into the program or the database,  
25 and it just kind of does its thing and then pumps out a

1 number.

2 Q. Do you generate reports about productivity?

3 A. Yes, I send them out, but those are all from the system.

4 Q. Do you use the Red Prairie for tracking the  
5 productivity?

6 A. No, sir.

7 Q. You just track productivity with a different method?

8 A. Yes.

9 Q. Do you have any role in billing or invoicing clients?

10 A. Just what's mine. I do like a monthly billing for my  
11 account. That's pretty much it.

12 Q. Which account is that?

13 A. Dukal.

14 Q. What do you do to do the monthly billing for Dukal?

15 A. I pull reports from Synapse (ph.) system and I just kind  
16 of put those numbers on a spreadsheet and send them to  
17 Billy.

18 Q. Were you eligible to vote in the election in July of  
19 this year?

20 A. Yes, sir.

21 Q. Where is your desk located?

22 A. It's located in the 5540 front office.

23 Q. Is that in an area where there are some supervisors and  
24 managers?

25 A. Yes, in between Phil and Billy.

1 Q. And have you done that before?

2 A. I have.

3 MR. BODZY: That's all I have.

4 MR. GOODWIN: Nothing.

5 JUDGE RINGLER: Thank you very much.

6 **(Witness excused.)**

7 JUDGE RINGLER: So in terms of today's witnesses, you're  
8 all set.

9 MR. BODZY: Yes, Your Honor.

10 JUDGE RINGLER: Tomorrow we've got definitely one, you  
11 mentioned.

12 MR. BODZY: Right.

13 JUDGE RINGLER: We've got Ms. Maxey-Chaisson?

14 MR. BODZY: Right.

15 JUDGE RINGLER: Ms. Maxey, whichever, at 8:00.

16 MR. BODZY: Right.

17 JUDGE RINGLER: And then possibly the video testimony,  
18 but you want to talk to that person. And then maybe two  
19 others?

20 MR. BODZY: Correct.

21 JUDGE RINGLER: And then you have?

22 MR. CONNOR: Potentially one rebuttal.

23 JUDGE RINGLER: Possibly one rebuttal, okay, as well.

24 All right, so we'll get together tomorrow again at 8:00.

25 And we'll finish up. I'm assuming we should be done by

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2						
3						
4						
5	Karen White	1778	1780	--	--	--
6						
7	Rachel Maxey Chaisson	1782	1798	1805	1810	--
8						
9	Tammy Stewart	1812	--	--	--	--
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11	Melisa Castillo	1821	--	--	--	--
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13	Shannon Miles	1826	1828	--	--	--
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	<u>E X H I B I T S</u>	
	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u> <u>IN EVIDENCE</u>
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3	UNION'S	
4	U-8	1786      1811
5	U-9	1787      1811
6	RESPONDENT'S	
7	R-40	1817      1818
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1 would you discuss with other employees their productivity  
2 and their need to increase or where they were?

3 A. No. I would just post it on a board.

4 Q. You never had. So if Mr. Holt, for instance, said that  
5 you on occasion had conversations with him regarding his  
6 productivity, that would not be correct?

7 A. I would talk to them as far as what's on the board, if  
8 they were standing beside me on the board -- beside the  
9 board.

10 MR. BODZY: Your Honor -- oh, I'm sorry.

11 MR. CONNOR: Sorry, go on.

12 MR. BODZY: I'm late on my objection. I was going to  
13 object to the last question. But go ahead and ask the next  
14 one.

15 Q. BY MR. CONNOR: Okay. During the time that, well, since  
16 you've been at OHL, have you attended union avoidance  
17 classes?

18 A. Union avoidance classes?

19 Q. Yes, ma'am.

20 A. Awareness classes, yes.

21 Q. But you don't remember attending any classes that were  
22 entitled union avoidance classes?

23 A. No.

24 Q. Are you familiar with your -- the training that the  
25 Company said you received during your time at OHL?



1 Q. And how many of those were supervisors, do you know?

2 A. Six, maybe seven.

3 Q. Now, let me direct your attention in April of 2011, you  
4 moved from the Greenlee campus to the Memphis campus; is  
5 that correct?

6 A. It was the 1st of May.

7 Q. And that was because the Greenlee campus closed; is that  
8 right?

9 A. They didn't close.

10 Q. OHL was no longer providing services at that --

11 A. Correct.

12 Q. -- campus; is that correct? And when you came to -- let  
13 me ask you this first. When you were at Greenlee, did you  
14 work on the Red Prairie system at Greenlee?

15 A. No.

16 Q. When was the first time that you began to work on the  
17 Red Prairie system?

18 A. When I moved over to Waterpik.

19 Q. And when you got to Waterpik, that was your -- was that  
20 your first assignment when you got to Memphis?

21 A. Yes.

22 Q. During the time that you were there, you became  
23 proficient in the use of Red Prairie, right?

24 A. I did.

25 Q. Became a super user; is that right?

1 A. That's what the Brentwood people were calling my  
2 position, yes.

3 Q. Okay. I'm sorry. The Brentwood would be the  
4 headquarters in OHL, are they OHL in Nashville?

5 A. Yes, of the Red Prairie, over all the program.

6 Q. I'm sorry. Of all the OEPs?

7 A. Operations Excellence Program. It's the tracking of the  
8 productivity.

9 Q. And so did you report to Brentwood?

10 A. No.

11 Q. When you were working on Red Prairie?

12 A. No.

13 Q. Who was your direct report when you started working in  
14 Waterpik?

15 A. When I signed the papers to come over from Greenlee, it  
16 was supposed to be Buddy Lowery.

17 Q. And when you went to Waterpik, was it Buddy Lowery?

18 A. I was told to give all my paperwork and my time requests  
19 off to the Waterpik supervisors and manager.

20 Q. And who was that?

21 A. Alfreda Owens and Randy Phillips.

22 Q. When you got to Waterpik, did you begin to train on Red  
23 Prairie at that point?

24 A. Yes.

25 Q. As you trained on Red Prairie, you indicated you became

1 a super user, so you spent some time running the program; is  
2 that correct?

3 A. Yes.

4 Q. And as you learned to use the program, one of your jobs  
5 was to communicate the results that you obtained from Red  
6 Prairie to the workers on the floor; is that correct?

7 A. It was to post it as well as explain what the data  
8 meant.

9 Q. And in addition to that, you would meet with the  
10 individuals and talk to them about their individual  
11 performance; is that correct?

12 A. If it required that, yes.

13 Q. What do you mean if that required that?

14 A. If the supervisor asked me to explain it to them or they  
15 asked a question about it, then I would explain.

16 Q. During those conversations, you would explain to them  
17 that their performance needed to be improved?

18 A. That according to their percentage, yes, that it needed  
19 to be improved.

20 Q. And the conversations that you had were generally when  
21 the performance was not adequate; isn't that correct?

22 A. No. In the beginning, it was everybody.

23 Q. You would have individual conversations with everybody  
24 in the beginning, is that --

25 A. Not individual conversations. If they came to me, I

1 would explain to them in general that everybody's  
2 performance was low because it was a new system and they  
3 were having to learn how to work the system.

4 Q. And when you say their performance was low, the purpose  
5 of the Red Prairie was to make the individuals more  
6 productive; is that correct?

7 A. It was to make them aware of what their productivity  
8 was.

9 Q. Is that all it did was measure how often -- how aware  
10 they were? I'm sorry. Red Prairie measures how quickly an  
11 individual works; is that correct? Is that a fair  
12 statement?

13 A. Yes.

14 Q. In addition to that, it also assists management in  
15 determining how to more effectively place product in the  
16 warehouse; isn't that correct?

17 A. Yes. As well as people. If there was a different job  
18 that they did better, they could move them to a different  
19 job.

20 Q. Correct. In other words, it performs -- the software  
21 performs a lot of functions other than determining how fast  
22 an individual works, doesn't it?

23 A. Yes.

24 Q. It is a tool that is used to determine effective  
25 logistics, correct?

1 A. Yes.

2 Q. It helps management determine, for example, it might  
3 tell management that a frequently picked item needs to be  
4 more easily accessible than an item that is less often  
5 picked; is that correct?

6 A. Red Prairie, I didn't use that function of it.

7 Q. But it had that function, didn't it?

8 A. I believe somewhere in there, it probably did have that  
9 function. But it wasn't used as -- Synapse was used  
10 primarily for that function.

11 Q. But you were a super user of Red Prairie, right?

12 A. Of Red Prairie, yes, not of Synapse.

13 Q. Did you prepare -- the reports that you prepared, well,  
14 did you prepare reports first?

15 A. Did I prepare reports?

16 Q. From Red Prairie, yeah.

17 A. I printed reports.

18 Q. And in addition to printing those reports, did you  
19 forward the reports to members of management?

20 A. Yes.

21 Q. And would members of management contact you and ask you  
22 for reports from Red Prairie?

23 A. Yes.

24 Q. And would you prepare those reports and send it to them?

25 A. Yes.

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1 Q. Would they ask you to prepare reports that are not  
2 provided to employees?

3 A. No. Any employee could have asked me for a report, and  
4 I would have given it to them.

5 Q. But employees didn't know what Red Prairie did, right,  
6 unless they had access to the system, right?

7 A. They had access to the system.

8 Q. It's your testimony that they could run the same reports  
9 on Red Prairie that you could run?

10 A. No.

11 Q. So they didn't have access to the system.

12 A. To a different function of the system, yes.

13 Q. They had access to some functions of the system, right?

14 A. Correct.

15 Q. Because it's a very complex program, right?

16 A. Correct.

17 Q. And it's a management tool, correct? It's a tool -- let  
18 me rephrase that. It's a tool to manage labor in the  
19 warehouse, correct?

20 A. Yes.

21 Q. And part of your job was to enter some of the data that  
22 was gathered in the warehouse; is that right?

23 A. Yes.

24 Q. And that was data that was gathered primarily by the RF  
25 guns; is that right?

1 A. The RF guns automatically went into the system.

2 Q. And so when a picker went and picked a part product and  
3 scanned it, Red Prairie, the computer system, whatever  
4 system it happened to be on, would know that that product  
5 had been picked and where it was in the warehouse, right?

6 A. Yes.

7 Q. And it could then track what was going on in the  
8 warehouse with that particular piece of product, right?

9 A. With the product or with the person?

10 Q. Well, let me rephrase it -- well, both. Didn't it do  
11 both?

12 A. Synapse did both. Red Prairie just tracked the person.

13 Q. Okay. So Red Prairie was only directed towards labor  
14 and what people did, is that a fair statement?

15 A. Yes.

16 Q. And the reports that were generated from Red Prairie had  
17 to do with the productivity and the best management  
18 practices for those individuals; is that correct?

19 A. Yes.

20 Q. Okay. And one of your jobs as the super user on Red  
21 Prairie was to talk to employees when they were not  
22 efficiently using their time, correct?

23 A. When the supervisor and manager didn't, couldn't explain  
24 it to them.

25 Q. And they would tell you to go talk to somebody, right?

1 To an individual on the floor, right?

2 A. Yes.

3 Q. And you would go out and talk to them; is that right?

4 A. Or they could come into the office and I could show them  
5 on the computer.

6 Q. Okay. And what you were showing them was how they could  
7 improve their productivity.

8 A. No, I wasn't aware. I didn't show them how they could  
9 improve their productivity.

10 Q. You told them their productivity was not as good as the  
11 Company, as OHL expected it to be. Is that a fair  
12 statement?

13 A. Yes. Red Prairie was designed that everybody should be  
14 at 100 percent.

15 Q. Correct. And it measured whether people were at 100  
16 percent or not.

17 A. Yes.

18 Q. And the information and the reports that you generated  
19 were used by management to determine whether or not people  
20 were at 100 percent?

21 A. Yes.

22 Q. Now, during the time that -- after you had left Greenlee  
23 and moved to the Memphis campus, was there a time when your  
24 position was that of a trainer to teach other people how to  
25 use the Red Prairie system?



1 **CROSS-EXAMINATION**

2 Q. BY MR. BODZY: Just a few follow-ups for you,  
3 Ms. Chaisson. You mentioned that you were a college grad at  
4 Southern Miss. Was that a requirement for your job in the  
5 Waterpik department at OHL?

6 A. No.

7 Q. You talked about the union avoidance meeting at  
8 Greenlee. I think you said you couldn't remember the  
9 specific meeting, but that the general practice was to  
10 include all employees in Greenlee meetings; was that  
11 correct?

12 A. Yes.

13 Q. Were you ever in any meetings that were just you and the  
14 supervisors at Greenlee about union avoidance?

15 A. No.

16 Q. Now, Mr. Connor asked you whether Red Prairie was a tool  
17 to manage labor in the warehouse. And I think you said it  
18 was; is that correct?

19 A. Yes.

20 Q. Did you use Red Prairie to manage labor in the  
21 warehouse?

22 A. No.

23 Q. Who in OHL used Red Prairie to manage labor in the  
24 warehouse?

25 A. Management as far as Randy Phillips and Buddy Lowery.

1 Q. Let's talk about your interaction with Red Prairie and  
2 what you did with it. Can you explain to me what your job  
3 was in dealing with Red Prairie?

4 A. It was to change their start times as far as when they  
5 would come in, in the morning, they would have to clock in,  
6 punch in at the time clock. Then they were supposed to go  
7 and clock into the kiosk so that the times were the same or  
8 within three minutes is what Randy and Alfreda and I had  
9 decided on, because I was having so many issues with it that  
10 we needed to come up with a set time of when I was going to  
11 change it or not. So I would go in, change their times to  
12 match their clock in and stop time, their clock out times.

13 Q. And let's be clear about this. You would change their  
14 times in which system?

15 A. In Red Prairie.

16 Q. Did you ever change anyone's time in the Unitime time  
17 clock system?

18 A. No, I've never had that kind of access.

19 Q. Did you have access to Unitime?

20 A. Yes.

21 Q. What type of access did you have?

22 A. Only to see start and stop times.

23 Q. And why did you need to see start and stop times in  
24 Unitime?

25 A. To make the system accurate. To make Red Prairie

1 accurate as far as times went, the breaking up of each job  
2 function throughout the day.

3 Q. So were you trying to line up the times in Unitime with  
4 the times in Red Prairie?

5 A. Yes.

6 Q. And if they weren't lined up, would that cause the  
7 productivity numbers to be skewed?

8 A. Yes. It would usually make them much lower than they  
9 actually were.

10 Q. So can you kind of take me through physically how you  
11 would do that or manually how you would do that to match up  
12 the times?

13 A. I would open up both systems, Unitime, run the report  
14 that would show their actual clock in and clock out time.  
15 Then I'd go into Red Prairie and I'd go to each of their  
16 names. And as I was going through, I could match the times  
17 up. And if they weren't, I could go into Red Prairie,  
18 change the start time, tell it to save it, and then go onto  
19 the next one. Same with the stop time.

20 Q. Would you go through that process every day for all the  
21 Waterpik employees?

22 A. Yes.

23 Q. Once you finished that process, did you generate any  
24 reports?

25 A. Yes. I would run a report to see what the overall

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1 productivity had been.

2 Q. What did you do with that report?

3 A. I'd go out to the warehouse floor and post them for  
4 everyone to see.

5 Q. Did you send that report to anyone else?

6 A. The daily one I would send to Randy, Alfreda, and Buddy  
7 Lowery.

8 Q. Was that the extent of your involvement with the Red  
9 Prairie system?

10 A. Adjusting the times and some of the -- there is one  
11 function, RF gun, that I would have to delete.

12 Q. Tell us how you would do that.

13 A. The same way as adjusting times. It was the same  
14 screen, just deleting a function when it had no  
15 productivity, no time on it at all.

16 Q. So reconciling the times between the two systems,  
17 generating reports, and deleting the RF gun, was that the  
18 extent of your involvement with the Red Prairie system?

19 A. Yes.

20 Q. Ms. Chaisson, were you also involved in billing at all?

21 A. Yes.

22 Q. And this is while you were at Waterpik?

23 A. It wasn't for Waterpik. It was after I had moved over  
24 to fill in for a CSR at Rolland. I started doing that for  
25 Kodak.

- 1 Q. When you were assigned to the Waterpik department as the  
2 Op Exec's [sic] assistant, did you fill in for CSRs?  
3 A. Yes.  
4 Q. In which accounts?  
5 A. Waterpik and over at Rolland.  
6 Q. I think you mentioned that your workstation was in the  
7 office area of Waterpik; is that right?  
8 A. Yes.  
9 Q. Did you have your own personal office?  
10 A. It was a cube within the office.  
11 Q. Were there any other non-supervisory employees who had  
12 cubes in that office?  
13 A. Yes. The CSR and the inventory control specialist.  
14 Q. And what's the CSR's name?  
15 A. Patsy Quinn.  
16 Q. And the inventory control specialist?  
17 A. Doris Kilpatrick.  
18 Q. When you were working in Waterpik, did you punch a time  
19 clock?  
20 A. Yes.  
21 Q. Where was the time clock located?  
22 A. Out on the warehouse floor.  
23 Q. When you would take your breaks at Waterpik, where would  
24 you take your breaks?  
25 A. Either in the break room or in my truck.

1 Q. Ms. Chaisson, if there weren't employees out using RF  
2 guns on the floor and the other -- working on the floor,  
3 would there be anything to do in Red Prairie?

4 A. If they weren't?

5 Q. Right.

6 A. Yes.

7 Q. What would there be to do in Red Prairie?

8 A. There were manual entries that had to be entered in.

9 Q. And those were from the people working out on the floor?

10 A. They should have been doing it, themselves. But if they  
11 missed a punch, then I would go and add the punch in.

12 Q. If no one was working out on the floor, if the floor  
13 went away, if the Waterpik account went away, would there  
14 still be something for you to do in the Red Prairie program?

15 A. No.

16 Q. Did you ever tell Jill McNeal to log into an LM-42  
17 rather than a different login in the system?

18 A. Not a job code, job function. LM-42 would have been an  
19 actual job code but to a different login name. We  
20 originally had all the leads doing the same as the rest of  
21 the employees where they'd have to change between each job  
22 function. That was becoming too cumbersome on the actual  
23 leads. So we changed it to where theirs was I believe it's  
24 called non-value added, where they log into a different  
25 name. It tracks how long they are in the system, saying

1 that, yes, they are working but they don't have to switch  
2 between so many jobs.

3 Q. Did you explain that to Ms. McNeal?

4 A. Yes.

5 Q. Did you ever tell any employee that they would be  
6 disciplined if they didn't get their productivity up?

7 A. Only instructed by the supervisor.

8 Q. Who decided where the productivity levels were that were  
9 acceptable or unacceptable?

10 A. Because it was start-up, they hadn't, they being Randy  
11 and Alfreda, hadn't been issuing any disciplinary actions.  
12 But as far as Brentwood went, they said that anybody in the  
13 bottom 10 percent would need an observation, which is just  
14 being followed for an hour, seeing where their productivity  
15 was before they started watching them, then during the hour  
16 they were watching them. Then they could stop it and see  
17 the difference in productivity and how the employee that  
18 without all these other distractions with you just working  
19 this is where you could be.

20 Q. Let me ask it this way. Did you ever decide what  
21 productivity levels were acceptable or unacceptable?

22 A. No.

23 Q. When you were in Waterpik, were you hourly or salary?

24 A. Hourly.

25 Q. Did you get overtime if you worked over 40 hours?

1 A. Yes.

2 Q. When OHL would gather all their managers and supervisors  
3 together for a meeting, would you attend those meetings?

4 A. No.

5 Q. I think you mentioned this, but I just want to clarify  
6 it. The kiosk, what is the kiosk?

7 A. It's a small computer system, not really a full  
8 computer, but it can process all the information out on the  
9 floor.

10 Q. It's on the floor you say?

11 A. There's two out on the floor at Waterpik.

12 Q. Who interfaces with the kiosk?

13 A. Every employee.

14 Q. And the kiosk is part of the Red Prairie system?

15 A. Yes.

16 MR. BODZY: That's all the questions I have.

17 JUDGE RINGLER: Redirect?

18 **REDIRECT EXAMINATION**

19 Q. BY MR. CONNOR: Ms. Chaisson, you indicated that, well,  
20 let me ask you the question this way. You had regular  
21 communications with Brentwood regarding the results of the  
22 report that you were generating; is that a fair statement?

23 A. Yes.

24 Q. Would you communicate with them daily?

25 A. If I had questions and didn't understand the system, I



1 could -- I had Jason Bost's number that I could contact him.

2 Q. Okay. Did you send your reports that were created, did  
3 you send those to Brentwood?

4 A. They had access to get them on their own.

5 Q. So they were using the reports that you generated; is  
6 that right?

7 MR. BODZY: Objection. Calls for speculation.

8 JUDGE RINGLER: Overruled. You can answer the question.

9 THE WITNESS: Will you repeat it, please?

10 Q. BY MR. CONNOR: They were using the results that were  
11 generated -- Brentwood used the results that were generated  
12 on the Red Prairie system in Memphis to make management  
13 decisions, correct?

14 A. I don't know as far as management decisions. I don't  
15 know exactly how all they used it, but it was used to, in  
16 comparison to other cities that were also on Red Prairie.

17 Q. And would you receive communications from Brentwood  
18 about specific individuals who were underperforming?

19 A. I would be on the phone call as well, yes.

20 Q. Who else would be on the phone call?

21 A. Randy and Alfreda.

22 Q. And during the course of those conversations, there  
23 would be specific individuals that would be identified as  
24 underperformers; is that correct?

25 A. The bottom 10 percent, yes.

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1 Q. Now, you didn't make any secret around the plant, did  
2 you, that you communicated with Brentwood and Alfreda and  
3 Randy about the productivity numbers, did you?

4 A. No.

5 Q. So people knew that you were talking with them and in  
6 communication about these productivity numbers, correct?

7 A. Yes.

8 Q. And so if you had -- you did at least on occasion  
9 communicate these results to the workers out on the floor,  
10 right?

11 A. Yes. I posted that they were in the bottom 10 percent  
12 weekly.

13 Q. So everybody knew who was in the bottom 10 percent. And  
14 they knew you -- I'm sorry, you need to say yes or no.

15 A. Yes.

16 Q. And everybody knew that you were the person that posted  
17 that. Is that correct?

18 A. Yes.

19 Q. Everybody knew or at least some of the people knew that  
20 you were in communication with Alfreda, Randy, and Brentwood  
21 about this; is that correct?

22 A. Yes.

23 JUDGE RINGLER: Did this ever engender hostility from  
24 the bottom 10 percent?

25 THE WITNESS: Not that I'm aware of. Everyone knew that

1 I just ran the report and gave it to Randy and Alfreda, and  
2 they did with it what they wanted.

3 JUDGE RINGLER: So if someone is in the bottom 10  
4 percent, and I know you talked about it a little bit, what  
5 would be the process?

6 THE WITNESS: What would be the process for the bottom  
7 10 percent?

8 JUDGE RINGLER: Yeah.

9 THE WITNESS: They would get an observation.

10 JUDGE RINGLER: Okay. And that's the one hour,  
11 supervisor or somebody following them around.

12 THE WITNESS: Um-hum.

13 JUDGE RINGLER: Okay.

14 THE WITNESS: And then we would stop it as soon as they  
15 were done. And they would have a meeting with that employee  
16 and show them the difference in where they had been, where  
17 they were for that point, and then set up a goal for where  
18 they needed to be for the next two weeks.

19 JUDGE RINGLER: And what if the employee wasn't  
20 successful during the next two weeks, what would happen?

21 THE WITNESS: If they fell in the bottom 10 percent,  
22 they'd get another observation.

23 JUDGE RINGLER: All right. What would happen after  
24 that?

25 THE WITNESS: It didn't go that far. I had already

1 switched to a different account.

2 JUDGE RINGLER: Okay.

3 Q. BY MR. CONNOR: Were you part of the observation?

4 A. No.

5 Q. Were you part of the meeting at the conclusion of the  
6 observation?

7 A. No.

8 JUDGE RINGLER: On the observation, did you run a report  
9 for the manager to use during the meeting?

10 THE WITNESS: Yes.

11 Q. BY MR. CONNOR: Ms. Chaisson, if the warehouse went  
12 away, I believe you testified that if the warehouse went  
13 away, the need for Red Prairie would then disappear; is that  
14 right?

15 A. Yes.

16 Q. And the reason for that is that the Red Prairie is a  
17 warehouse management system. Isn't that correct?

18 A. It is labor management.

19 Q. Specifically for warehouses, correct?

20 A. Yes.

21 Q. Okay. The workers knew that you had the ability to  
22 change -- the workers knew that you had the ability to  
23 reconcile their clock in times with their Red Prairie kiosk  
24 entry time; isn't that correct?

25 A. Yes.